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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 134

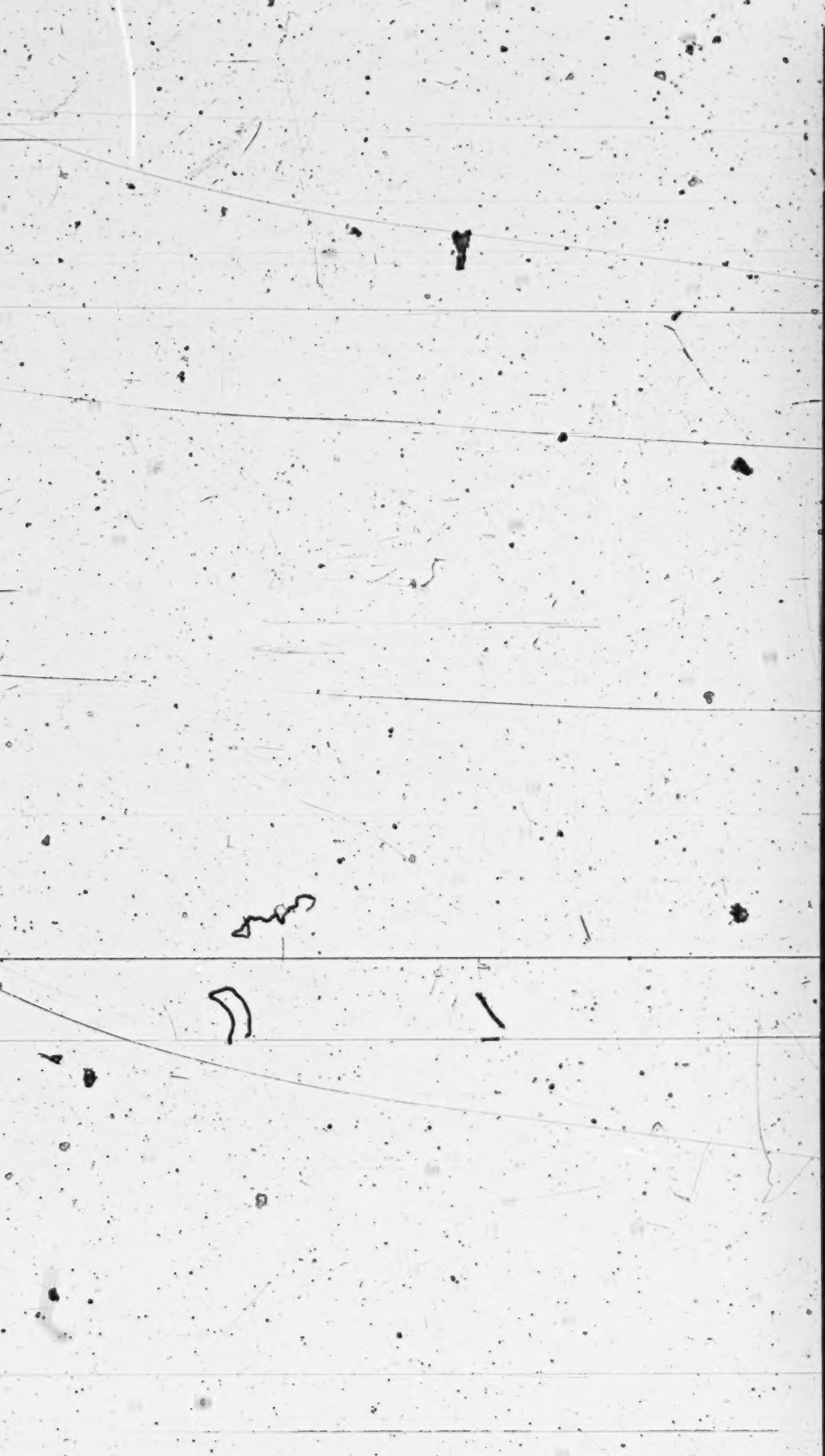
REPUBLIC NATURAL GAS COMPANY, APPELLANT,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PEERLESS OIL AND GAS COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED JUNE 16, 1947.



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APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

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IN THE SUPREME COURT OF OKLAHOMA

No. 32123

REPUBLIC NATURAL GAS COMPANY, A Corporation, Plaintiff in Error,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation, Defendant- in Error.

PETITION IN ERROR—Filed March 7, 1945

Comes now Republic Natural Gas Company and shows to the court that on the 10th day of January, 1945, the defendant in error Corporation Commission of the State of Oklahoma entered its Order No. 17,463 in Cause No. 902, entitled Peerless Oil and Gas Company, a corporation, Applicant, vs. Republic Natural Gas Company, a corporation, Respondent, requiring and ordering plaintiff in error, respondent therein, to take gas from the Peerless Oil and Gas Company's well in the Hugoton Oklahoma Gas Field, to pay it for said gas, and prohibiting plaintiff in error from producing gas from any of its gas wells located in said field, upon its failure to take and pay for the gas from the Peerless Oil and Gas Company's well. Said order further provided that:

[fol. 3] "2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

Thereafter and within the time provided by law, plaintiff in error, in open court, gave notice of appeal to this court from said decision and order of the Corporation Commission

which said appeal was granted by the Corporation Commission. Plaintiff in error gave, and Corporation Commission approved a supersedeas bond in the sum of $25,000.00, whereupon said order was superseded and the enforcement thereof suspended by the Corporation Commission during the pendency of the appeal to this court.

The entire record in said cause, duly certified to by the Corporation Commission and filed as prescribed by law, is hereto attached, marked "Exhibit A", and made a part of this petition in error.

That said Republic Natural Gas Company alleges that there is error in the said record, order, judgment, and proceedings of the Corporation Commission in this, to-wit:

[fol. 4] 1. The findings of fact made herein by the Corporation Commission are not sustained by the evidence, and are contrary to the evidence.

2. Finding of fact No. 9 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

3. Finding of fact No. 12 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

4. Finding of fact No. 13 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

5. Finding of fact No. 14 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

6. Finding of fact No. 15 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

7. Finding of fact No. 17 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

8. Finding of fact No. 18 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

[fol. 5] 9. Finding of fact No. 19 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

10. Finding of fact No. 20 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

11. Finding of fact No. 21 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

12. Finding of fact No. 22 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

12. Finding of Fact No. 22 made herein by the Corporation Commission is not sustained by the evidence and is contrary to the evidence.

13. Finding of fact No. 23 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

14. Finding of fact No. 24 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

15. Finding of fact No. 25 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

[fol. 6] 16. Finding of fact No. 26 made herein by the Corporation Commission is not sustained by the evidence, and is contrary to the evidence.

17. The Corporation Commission erred in holding as a matter of law that plaintiff in error is a common carrier of natural gas within the meaning of the Statutes of Oklahoma.

18. The Corporation Commission erred in holding as a matter of law that plaintiff in error is a common purchaser of natural gas within the meaning of the Statutes of Oklahoma defining common purchasers.

19. The Corporation Commission erred in holding that Chapter 198, Session Laws 1913 (Section 233, Article 52, O. S. 1941) authorized it to order plaintiff in error as a producer only of gas to purchase gas from Peerless Oil and Gas Company, another producer of gas in the same field.

20. Chapter 198, Session Laws 1913 (Section 233, Article 52, O. S. 1941) as construed and applied by the Corporation

Commission in ordering plaintiff in error, a producer only of gas, to purchase gas from another producer in the same field, denies it the equal protection of the laws, and deprives it of its property without due process of law in violation of [fol. 7] the Fourteenth Amendment to the Constitution of the United States, and of Section 7 and 23, Article 2, of the Constitution of the State of Oklahoma.

21. Said Order No. 17,463 of the Corporation Commission denies plaintiff in error the equal protection of the laws, and deprives it of its property without due process of the law in violation of the Fourteenth Amendment to the Constitution of the United States, and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma.

22. The Corporation Commission erred in rendering judgment in favor of defendant in error, Peerless Oil and Gas Company, and against this plaintiff in error.

Wherefore, plaintiff in error prays the court that said Order No. 17,463 and judgment of the Corporation Commission be reversed, set aside and held for naught with directions to the Corporation Commission to set aside and annul said order and judgment, and to enter an order and judgment in favor of plaintiff in error and against the defendant in error, Peerless Oil and Gas Company, and that this plaintiff in error have judgment in this court for all costs laid out and expended by it, and for such other relief as to the court may seem just.

Foulston, Siefkin, Bartlett & Powers, Rainey, Flynn, Green & Anderson, Rizley & Tryon, Attorneys for Plaintiff in Error.

[fol. 8] EXHIBIT "A" TO PETITION IN ERROR

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause C. D. 902. 32123

PEERLESS OIL AND GAS COMPANY, a Corporation, Applicant,

vs.

REPUBLIC NATURAL GAS COMPANY, Respondent

Transcript of Proceedings

[fol. 8a] APPEARANCES:

Earl Pruet, of Richardson, Chartel, Cochran and Pruet, Attorneys for the Applicant, Peerless Oil Company.

Robert C. Foulston and George Seifin of Foulston, Seifkin, Bartlett and Powers, 608 Fourth National Bank Building, Wichita, Kansas.

Ross Rizley, of Rizley and Tryon, Guymon, Oklahoma, All Attorneys of Record for Republic Natural Gas Co., Dallas, Texas.

Ed White, of Jarman and Jarman, Oklahoma City, Oklahoma, Attorneys of Record for Texas County Land Owners and Royalty Owners Association.

[fols. 9-13] Be It Remembered, that this action was begun on August 1st, 1944, by the filing with the Corporation Commission of the State of Oklahoma an Application for an Order of said Commission directing said Republic Natural Gas Company to take and purchase gas ratably from the Peerless Company's well in the Hugoton field ratably with other wells in said field and fixing the price for said gas, which said action was filed under Cause No. CD-902, on the Docket of the Corporation Commission of the State of Oklahoma, and which Application is in words, letters and figures as follows, to-wit:

[fol. 14] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

No. CD-902

PEERLESS OIL AND GAS COMPANY, a Corporation,
Complainant,

vs.

REPUBLIC NATURAL GAS COMPANY

APPLICATION—Filed August 1, 1944

Comes now the applicant above named and alleges and states:

1. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and duly authorized to transact business in Oklahoma.

2. That Republic Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and duly authorized to transact business in Oklahoma.

3. That Peerless Oil and Gas Company is the owner of an oil and gas lease dated December 31, 1936, executed by the Central Life Assurance Society (Mutual), in favor of W. E. Benson, which lease covers:

> West Half (W½) and Southeast Quarter (SE¼) of Section 14, Township 6 North, Range 15 East, of Cimarron Meridian, in Texas County, Oklahoma;

and that Republic Natural Gas Company now owns the [fol. 15] minerals lying in and under said above described tract of land; and that Republic Natural Gas Company purchased said minerals for the purpose of obstructing Peerless Oil and Gas Company in obtaining consolidation of the leases in said Section 14, for the purpose of preventing Peerless Oil and Gas Company from obtaining an exception from the Petroleum Administrator for War allowing and permitting the drilling of a well in said Section 14, and for the further purpose of preventing Peerless Oil and Gas Company from developing said Section 14, thereby enabling Republic Natural Gas Company to drain all of the natural gas from underneath said Section 14.

4. That Peerless Oil and Gas Company is also the owner of an oil and gas lease covering:

Northeast Quarter (NE¼) of Section 14, Township 6, North, Range 15 East, C. M., Texas County, Oklahoma,

dated November 13, 1937, executed by J. V. Blankenship, Cuba A. Blankenship and Annie M. Cuthbert in favor of W. E. Benson; that J. V. Blankenship owns the minerals lying in and under said NE¼ of said Section 14.

5. That as provided by law and the Regulations of the Corporation Commission Peerless Oil and Gas Company filed with the corporation Commission of Oklahoma notice of its intention to drill a well in said section and made application for and obtained from the Natural Gas Division [fol.16] of the Petroleum Administration for War an exception permitting the drilling of a well in the Southwest Quarter (SW¼) of said section at a point near the approximate center thereof.

6. That Peerless Oil and Gas Company has drilled a well for the production of gas located in the Southwest Quarter (SW¼) of the above described section at a point near the approximate center thereof, which said well was completed, equipped and ready for production on the 28th day of April, 1944.

7. That Peerless Oil and Gas Company has notified the Republic Natural Gas Company that it has consolidated the two leases above described in pursuance of the statutes of the State of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma, issued pursuant thereto.

8. That Republic Natural Gas Company, a corporation is the owner of various gas wells from which it is not producing natural gas from the natural reservoir into which said well owned by Peerless Oil and Gas Company has been drilled, said wells so owned by Republic Natural Gas Company include three wells which directly offset said well owned and drilled by Peerless Oil and Gas Company.

9. Republic Natural Gas Company is now producing natural gas from each of said wells, owned by it as aforesaid, and has been producing natural gas from each of said wells [fol. 17] for a considerable period of time, in considerable

quantities, the exact quantity or quantities being at this time to the applicant unknown by being well known to the respondent. In producing natural gas from its wells, as aforesaid, Republic Natural Gas Company has been for a considerable period of time draining natural gas from underneath said Section 14, above described, which property is covered by oil and gas leases now owned and held by Peerless Oil and Gas Company. Republic Natural Gas Company, by means of the wells owned by it aforesaid, is now taking natural gas from the common reservoir into which said well owned by Peerless Oil and Gas Company has been drilled. That Republic Natural Gas Company is the owner of a pipeline which crosses Section 14 and is now engaged in the purchase and transportation of natural gas in Texas County, Oklahoma, which natural gas it transports and thereafter sells. That in so doing the Republic Natural Gas Company has not produced its wells ratably with said well owned by said Peerless Oil and Gas Company and has not taken, purchased and produced natural gas from said Peerless Oil and Gas Company's well ratably with said wells belonging to Republic Natural Gas Company.

10. That by reason of the matters and things hereinabove set forth, Republic Natural Gas Company is securing an unfair proportion of the gas from the common reservoir into which the well owned by Peerless Oil and Gas Company [fol. 18] has been drilled, as aforesaid, is not taking ratably from Peerless Oil and Gas Company the natural gas in proportion to its interest in said gas, and is draining gas from underneath the property covered by said leases owned by Peerless Oil and Gas Company, as aforesaid.

11. That Peerless Oil and Gas Company has been unable to secure a market for the natural gas which it is capable of producing from its said well as aforesaid and by reason of all matters and things hereinabove set forth applicant has been suffering, is now suffering, and will continue to suffer irreparable loss and damage by reason of the drainage of said Section 14, as aforesaid.

12. That heretofore and on the 27th day of March, 1944, the Peerless Oil and Gas Company mailed to Republic Natural Gas Company, a corporation, Dallas, Texas, a tender and demand, a copy of which is marked Exhibit "1", attached hereto and made a part hereof. That Republic Natural

Gas Company has ever since neglected and refused to comply with said notice and demand.

13. That on the 20th day of July, 1944, Peerless Oil and Gas Company mailed to Republic Natural Gas Company, via registered mail, return receipt requested, a second notice and demand, a copy of which is marked Exhibit "2", [fol. 19] attached hereto and made a part hereof.

14. That under and by virtue of the laws of the State of Oklahoma, Peerless Oil and Gas Company is entitled to consolidation of the leases above described and the owners of the minerals in said section are obligated thereafter to take their pro rata part of the one-eighth (1/8) land owners' royalty.

15. That under and by virtue of the laws of the State of Oklahoma and the Orders of the Corporation Commission of the State of Oklahoma, entered pursuant thereto, it is the duty of Republic Natural Gas Company to produce natural gas from its wells, as aforesaid, ratably with said well of Peerless Oil and Gas Company and to take, purchase and produce natural gas from said Peerless Oil and Gas Company's well ratably with said wells of Republic Natural Gas Company, all of which Republic Natural Gas Company has refused to do.

Wherefore, applicant prays that this matter be set down for hearing; that proper notices be given as required by law and the Rules, Orders and Regulations of the Corporation Commission; that a hearing be had and an Order of this Commission be entered requiring Republic Natural Gas Company to permit consolidation of the leases and requiring Republic Natural Gas Company to connect its pipe line to the well drilled and owned by Peerless Oil and Gas Company aforesaid, at some point designated by this Commis- [fol. 20] sion, and to produce natural gas from its said wells ratably with said well of Peerless Oil and Gas Company, and to take and purchase natural gas from said Peerless Oil and Gas Company's well at a price to be fixed by this Commission.

Richardson, Shartel, Cochran & Pruet, by Earl Pruit, Attorneys for Applicant, 1133 First National Building, Oklahoma City 2, Oklahoma.

Duly sworn to by Earl Pruit. Jurat omitted in printing.

[fol. 21] EXHIBIT NO. 1 TO APPLICATION

Peerless Oil and Gas Company
Alamo National Building
San Antonio, Texas

March 27, 1944.

Republic Natural Gas Company, a corporation, Dallas, Texas.

Re: Peerless Oil and Gas Company

GENTLEMEN:

You are the owner of the minerals lying in and under the following described land:

The West one-half (W½) and the Southeast Quarter (SE¼) of Section 14, Township 6 North, Range 15-ECM, Texas County, Oklahoma,

covered by an oil and gas lease dated December 31, 1936, executed by Central Life Assurance Society (Mutual) in favor of W. E. Benson, said oil and gas lease is now owned by Peerless Oil and Gas Company.

Peerless Oil and Gas Company is also the owner of an oil and gas lease covering the Northeast Quarter (NE¼) of Section 14, Township 6 North, Range 15 ECM, Texas County, Oklahoma, dated November 13, 1937, executed by J. V. Blankenship, Cuba A. Blankenship and Annie M. Cuthbert, in favor of W. E. Benson. Peerless Oil and Gas Company is in the process of drilling a well for the production of gas, located as follows:

Southwest Quarter (SW¼) Section 14, Township 6 North, Range 15 ECM, Texas County, Oklahoma,

[fol. 22] which said well will be completed and placed in production on or about the 15th day of April, 1944.

You are the owner of a pipeline, which crosses the above described property, and are engaged in the transportation of gas in Texas County, Oklahoma.

You are hereby notified that Peerless Oil and Gas Company has consolidated the two leases above described, in pursuance of provisions of the Statutes of the State of Oklahoma and Orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto.

You are further notified that pursuant to the Statutes of the State of Oklahoma and Orders of the Corporation Com-

mission of the State of Oklahoma issued pursuant thereto, the undersigned hereby tenders to you the gas produced by the undersigned from said well and that the undersigned will deliver and sell the same to you in accordance with the provisions of the Statutes of the State of Oklahoma and the — issued pursuant thereto.

It is understood and the undersigned agrees that it will do and perform all things and bear all expense required of it, by the Statutes of the State of Oklahoma and the Orders of the Corporation Commission of the State of Oklahoma governing such sale, purchase and delivery.

Yours very truly, Peerless Oil and Gas Company,
[fol. 23] Signed by (Vernon F. Taylor), President.

EXHIBIT No. 2 TO APPLICATION

July 20, 1944.

Registered Mail. Return Receipt Requested. Special Delivery

Republic Natural Gas Company, a Corporation, Dallas, Texas.

Re: Peerless Oil and Gas Company

GENTLEMEN:

You are the owner of the minerals lying in and under the following described land:

> "The west half (W½) and the Southeast Quarter (SE¼) of Section Fourteen (14), Township Six (6) North, Range Fifteen (15) East of the Cimarron Meridian, in Texas County, Oklahoma,

covered by an oil and gas lease, dated December 31, 1936, executed by Central Life Assurance Society (Mutual), in favor of W. E. Benson, which said oil and gas lease is now owned by Peerless Oil and Gas Company.

Peerless Oil and Gas Company is also the owner of an oil and gas lease covering the NE¼ of Section 14, T. 6 N, R. 15 E., C. M., Texas County, Oklahoma, dated Novem-
[fol. 24] ber 13, 1937, executed by J. V. Blankenship, Cuba A. Blankenship and Annie M. Cuthbert, in favor of W. E. Benson.

Peerless Oil and Gas Company has drilled a well for the production of gas, located in the SW¼ of the above described property, at a point near the approximate center of said section, which said well has been completed, equipped and is now ready for production.

You are hereby notified that Peerless Oil and Gas Company has consolidated the two leases above described, in pursuant of provisions of the Statutes of the State of Oklahoma and Orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto.

You are the owner of various gas wells, from which you are producing natural gas from the common reservoir into which said well owned by Peerless Oil and Gas Company has been drilled, including three wells which directly offset said well drilled and owned by Peerless Oil and Gas Company.

You are now producing natural gas from each of said wells, owned by you as aforesaid, and have been producing natural gas from each of said wells for a considerable period of time.

In producing natural gas from your wells as aforesaid, you are now and have been for a considerable period of time, draining natural gas from underneath said Sec. 14 above described, which property is covered by oil and gas leases [fol. 25] now owned and held by Peerless Oil and Gas Company.

You are now taking natural gas from the common reservoir into which said well drilled and owned by Peerless Oil and Gas Company has been drilled.

You are the owner of a pipe line which crosses said section 14 and are now engaged in the purchase and transportation of natural gas in Texas County, Oklahoma, which Natural gas you transport and thereafter sell.

You are further notified that pursuant to the Statutes of the State of Oklahoma and Orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, the undersigned hereby tenders to you the gas produced by the undersigned from said well, situated in said Section 14, Township 6 North, Range 15 East of Cimarron Meridian, in Texas County, Oklahoma, and that the undersigned will deliver and sell the same to you in accordance with the provisions of the Statutes of the State of Oklahoma and the Orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, at the

price of five (5) cents per thousand cubic feet, which we understand you are paying to others from whom you are buying natural gas in the common source of supply, but in the event of failure to agree upon a price, at such price as may be fixed by the Corporation Commission of the State of Oklahoma.

[fol. 26] The natural gas produced by Peerless Oil and Gas Company from its said well situated in said Section 14, will be delivered to you at some reasonable point, which the undersigned considers to be at the mouth of its said well, provided, if point of delivery cannot be agreed upon, same shall be determined and fixed by the Corporation Commission of the State of Oklahoma.

It is understood, and the undersigned hereby expressly agrees, that it will do and perform all things and bear all expense required of it, by the Statutes of the State of Oklahoma and the Orders of the Corporation Commission of the State of Oklahoma governing such sale, purchase and delivery.

Peerless Oil and Gas Company hereby demands that you produce natural gas from your said wells ratably with said well of Peerless Oil and Gas Company and that you take, purchase and produce natural gas from said Peerless Oil and Gas Company's well ratably with your said wells.

Peerless Oil and Gas Company, (Signed) by Earl Pruet, Its Attorney.

CC-Republic Natural Gas Co., c/o Robert Foulston, 4th National Bank Bldg., Wichita, Kansas.

[File endorsement omitted.]

[fol. 27] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER SETTING CAUSE FOR HEARING—Filed September 19, 1944

It Is Hereby Ordered by the Corporation Commission of the State of Oklahoma that the application of Peerless Oil and Gas Company for an order of the Commission directing Republic Natural Gas Company to take and purchase gas

ratably from the Peerless Company's well in the Hugoton Field ratably with other wells in said field and fixing the price for said gas, be set for hearing in the Commission's court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 10 day of October, 1944, at 10 o'clock A. M., and that proper notice be given as required by law.

Entered this 19 day of September, 1944.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-[fol. 28] Chairman; W. J. Armstrong, Commissioner. (Seal.)

Attest: Carl B. Mitchell, Secretary.

[File endorsement omitted.]

[fol. 29] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF HEARING—Filed September 19, 1944

The State of Oklahoma to Republic Natural Gas Company and all producers and takers of gas in the State, and especially in the Hugoton Field in Texas County:

Notice Is Hereby Given that the Corporation Commission of the State of Oklahoma will conduct a hearing in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 10th day of October, 1944, at 10 o'clock A. M., upon the application filed hereby by Peerless Oil and Gas Company asking that the Corporation Commission issue an order directing Republic Natural Gas Company to take and purchase gas ratably from the Peerless Oil and Gas Company's well in Section 14, Township 6 North, Range 15 East of Cimarron Meridian, in Texas County, Oklahoma, and in the same proportion as from other wells on developed leases in the Hugoton Field, as required by [fol. 30] the laws of Oklahoma and the rules and regulations of the Commission; that the leases of peerless Oil and Gas Company on Section 14 be consolidated, and that the Commission fix the price at which gas shall be purchased, since complainant and respondent cannot agree thereon: and that the Commission issue such other orders as may

be necessary in the premises; at which hearing all interested persons, firms, and corporations should appear and present evidence.

Done and Performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 19 day of September, 1944.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner. (Seal.)

Attest: Carl B. Mitchell, Secretary.

[File endorsement omitted.]

[fol. 31] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

AFFIDAVIT OF PUBLICATION—LEGAL NOTICE

(Published in the Oklahoma County Register, September 28, 1944.)

The State of Oklahoma to Republic Natural Gas Company and all producers and takers of gas in the State, and especially in the Hugoton Field in Texas County:

Notice is hereby given that the Corporation Commission of the State of Oklahoma will conduct a hearing in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 10th day of October, 1944, at 10 o'clock A.M., upon the application filed herein by Peerless Oil and Gas Company asking that the Corporation Commission issue an order directing the Republic Natural Gas Company to take and purchase gas ratably from the Peerless Oil and Gas Company's well in section 14, Township 6, North, Range 15 East of Cimarron Meridian, in Texas County, Oklahoma, [fol. 32] and in the same proportion as from other wells on developed leases in the Hugoton Field, as required by the laws of Oklahoma and the rules and regulations of the Commission; that the leases of Peerless Oil and Gas Company, on Section 14 be consolidated, and that the Commission fix the price at which gas shall be purchased, since

complainant and respondent cannot agree thereon; and that the Commission issue such other orders as may be necessary in the premises; at which hearing all interested persons, firms, and corporations should appear and present evidence.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 19th day of September, 1944.

Corporation Commisssion of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner.

Attest: Carl B. Mitchell, Secretary. (Seal)

STATE OF OKLAHOMA,
Oklahoma County, ss:

W. C. Bonney, of lawful age, being duly sworn on oath, deposes and says: That he is the Principal Clerk of The [fol. 33] Oklahoma County Register, a newspaper of general circulation in the State of Oklahoma and printed at Oklahoma City, Oklahoma. That the attached notice was published in all regular editions of said newspaper on the following dates: Sept. 28, 1944 only.

W. C. Bonney.

Subscribed and sworn to before me this 28th day of September. Pauline Jennings, Notary Public. My Commission Expires Sept. 14, 1946. (Seal)

Publishers Fee, 5.25.

[fol. 34] Before the Corporation Commission of the State of Oklahoma

[Title omitted]

SUMMONS AND RETURN—Filed September 20, 1944

The State of Oklahoma to Walker T. Pound, Conservation Officer, or any Deputy Conservation Officer, Greetings:

You are hereby commanded to notify Republic Natural Gas Company that an application has been filed by the Peerless Oil and Gas Company with the Corporation Com-

mission of the State of Oklahoma, said application being hereto attached and made a part hereof; that notice is being given by publication as required by law, and that it must answer said application filed against it on or before the 10th day of October, 1944, at 10 o'clock A.M., or such application will be taken as true and judgment rendered accordingly.

You will make return of this summons on or before the 20th day of September, 1944.

Witness my hand and the seal of the Corporation Com-
[fol. 35] mission this 19th day of September, 1944.

Carl B. Mitchell, Secretary. (Seal)

I received the above summons this 19th day of September, 1944, and served a true copy thereof, with exhibit attached, on Katherine Manton, at her office, office of Secretary of State, she being Service Agent of Republic Natural Gas Company, on the 19 day of September, 1944.

Walker T. Pound, Conservation Officer. By W. H. Bradley, Deputy Conservation Officer.

[File endorsement omitted.]

[fol. 36] [File endorsement omitted]

Before the Corporation Commission of The State of Oklahoma

[Title omitted]

ANSWER OF THE RESPONDENT, REPUBLIC NATURAL GAS COMPANY, A CORPORATION—Filed October 10, 1944

Comes now Republic Natural Gas Company, a corporation, and for answer to the application of Peerless Oil and Gas Company filed herein, states:

1. It admits that Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in Oklahoma.

2. Respondent admits that Republic Natural Gas Company is a corporation organized and existing under and by

virtue of the laws of the State of Delaware and authorized [fol. 37] to transact business in the State of Oklahoma.

3. Respondent admits that Peerless Oil and Gas Company is the owner of an oil and gas lease dated December 31, 1936, executed by the Central Life Assurance Society in favor of W. E. Benson and covering The West Half (W½) and the Southeast Quarter (SE¼), of Section Fourteen (14), Township Six (6), North, Range Fifteen (15) East of Cimarron Meridian, in Texas County, Oklahoma.

Respondent further admits that Republic Natural Gas Company owns the minerals underlying the three quarters of land (including the natural gas thereunder), but this respondent specifically denies that it purchased said mineral interest for the purpose of obstructing Peerless Oil and Gas Company in obtaining consolidation of leases in said Section 14, and denies that respondent purchased said mineral interest for the purpose of preventing Peerless Oil and Gas Company from obtaining an exception from the Petroleum Administrator for War allowing and permitting the drilling of a well in said Section 14, or for the purpose of preventing Peerless Oil and Gas Company from developing said Section 14, or for the purpose of enabling Republic Natural Gas Company to drain all or any part of the natural gas underlying said Section 14.

[fol. 38]. That Republic Natural Gas Company acquired the said West Half and the Southeast Quarter of said Section 14 through a nominee on the 19th day of April, and has been the equitable or legal owner thereof ever since, and that said land was so acquired along with numerous other lands being offered for sale at said time, both in Texas County, Oklahoma, and in Stevens County, Kansas.

4. The respondent can neither admit nor deny the allegations of paragraph 4 of the application, but requires of the applicant strict proof thereof.

5. The respondent neither admits nor denies the allegations of the 5th paragraph of the application, but requires of the applicant strict proof thereof.

6. The respondent neither admits nor denies the allegations of paragraph 6 of the application, but requires of the applicant strict proof thereof.

7. If by the allegations of paragraph 7 of its application the applicant intends to refer to said letter marked "Ex-

hibit 1" or "Exhibit 2" attached to said application then, in such event, the respondent admits the receipt of said letters; but respondent specifically denies that Peerless Oil and Gas Company is possessed of the power to consolidate the minerals owned by respondent with the minerals of any other person, firm, or corporation without the consent of the respondent, which consent the respondent has not given.

[fol. 39] 8. Subject to the allegations hereinafter contained, respondent admits that it is the owner of several gas wells located and now producing natural gas in Texas County, Oklahoma, as well as in Stevens County, Kansas, which adjoins said Texas County, Oklahoma on the north; that among said gas wells so owned by the respondent are wells located in the vicinity of said Section 14, both in the State of Kansas and in the State of Oklahoma, and more particularly described as follows:

Unit #21 which include- the Southwest Quarter and the East half of Section 13, Township 35, Range 38, and the Northwest Quarter of Section 18, Township 35, Range 37 in Stevens County, Kansas, with a producing well in the Northwest Quarter of Section 18, Township 35, Range 37.

Unit #6 which embraces all of Section 15, Township 6, Range 15, Texas County, Oklahoma, with a producing well in the approximate center thereof.

Unit #8 which includes the South Half of Section 13, the Northeast Quarter of Section 24, both in Township 6, Range 15, and the Southwest Quarter of Section 18, Township 6, Range 16, Texas County, Oklahoma, with a producing well at the approximate center of the south line of the Southeast Quarter of Section 13.

[fol. 40] Unit #18 which includes the North Half and the Southeast Quarter of Section 18, and all of Section 7 in township 6, Range 16, and the East Half of Section 12, Township 6, Range 15, Texas County, Oklahoma, with a producing well in the North Half of Section 18.

Unit #9 which includes the North Half of Section 24, the Northwest Quarter of Section 25, and the Southeast Quarter of Section 23, all in Township 6, Range 15, Texas County, Oklahoma, with a producing well in the Southwest Quarter of Section 24.

Unit #15 which includes all of Section 16, Township 6, Range 15, Texas County, Oklahoma, with a producing well in the approximate center.

Unit #11 which includes all of Section 11, Township 6, Range 15, Texas County, Oklahoma, with a producing well in the approximate center.

Unit #58 which includes all of Section 19, Township 6, Range 15, Texas County, Oklahoma, with a producing well in the approximate center.

Respondent further admits that it is the owner of other gas wells in addition to those specifically referred to in both the States of Oklahoma and Kansas and that it is also the owner of numerous leasehold estates in the immediate vicinity of said Section 14, both in the State of Kansas and in the State of Oklahoma, under which leases it possesses the right to drill and to produce gas; that the nonproducing [fol. 41] leases owned by respondent in the area immediately surrounding Section 14 are fully described as follows:

[fol. 41]

Lease No.	Description	Acres Texas County, Oklahoma	Lease Dated	Lessors
1836	NW/4 22-6-15	160	1-18-34	Charles E. Simmons et ux
290	NE/4 22-6-15	160	1-28-40	C. R. Simmons et ux
1706	SW/4 22-6-15	160	7-26-41	J. C. Michael et ux
1743	SE/4 22-6-15	160	8-13-43	Mattie R. Callihan et al
1528	NW/4 27-6-15	160	8-4-41	Ethel Fanhouser et al
1528	SW/4 27-6-15	160	8-4-41	Albert M. Frankhouser et ux
1528	SE/4 27-6-15	160	8-4-41	Albert M. Frankhouser et ux
1752	NE/4 27-6-15	160	8-18-43	C. A. Nordbert, Succerr—or Trustee
293	SW/4 26-6-15	160	1-28-40	Grace D. Isham
1527	SE/4 26-6-15	160	8-5-41	Grace D. Isham
1796	NW/4 26-6-15	160	2-9-44	Grace D. Isham
1522	SW/4 23 & NE/4 26-6-15	240	8-5-41	J. C. & Geraldine Powell
1518	S/2 NE/4 26-6-15	80	8-5-41	Willa I. Powell
1524	NW/4 23-6-15	160	8-5-41	Charles E. & Minnie Simmons
1520	NE/4 23-6-15	160	8-5-41	Daniel C. & Bertha E. Hampsten
1658	Lot 1 of Sec. 11 & Lot 2 of 12-6-15	156.31	12-4-42	Warren M. and Vada E. Farrar

[fol. 42] Lease covers ½ interest in minerals.
Remaining ½ owned by Magnolia is unleased.

1818	NW/4	13-6-15	160	3-30-37	Mary Denman, Grace Denman & Benjamin Denman
1807	NE/4	13-6-15	160	8-20-37	Vera & Clarence Grewell & American Lf Ins. Co.
1523	NW/4	24-6-15	160	8-5-41	Jerry C. Powell
1531	NE/4	25-6-15	160	8-5-41	Cyrus S. & Ollie May Judd
1574	SW/4	25-6-15	160	8-5-41	Claire R. Kennedy, Earl G. Kennedy, John Clifford Kennedy, Ralph I. Kennedy
1840	SE/4	25-6-15	160	4-23-42	R. W. Decker, Adm. of Estate of Hattie I Decker, deceased
1846	NW/4	30-6-16	160	4-15-37	Anna F. & La Von Witt
1534	NE/4	30-6-16	160	8-5-41	Mathilda Swenson
1532	SW/4	30-6-16	160	8-5-41	B. A. & Ava M. Blackwelder
944	SE/4	30-6-13	160	8-30-38	Gladys Marie & William R. Pennock & Wesley Boardway
			Stevens County Kansas		
1598	NE/4 N/2 SW/4	18-35-37	236.78	2-24-42	Ruth M. & E. M. Harrison
1591	SE/4 & S/2 SW/4	18-35-37	227.92	1-21-42	Edna and John Meyers
1424	NW/4	17-35-37	160	7-5-41	Ruby & H. A. Statton
1621	S/2 NE/4	16-35-37 & 17-35-37	458.68	4-9-42	A. B. Riney

[fol. 43]

1575	SW/4	17-35-37	150.64	8-25-41	Clarence & Vera A. Crewell, Eugene R. & Helen Johnson, A. B. & C. C. Thornton
1618	SE/4	17-35-37	160	2-6-35	Joseph S. & Leonia Weigel

Respondent is also the owner of the Minerals underlying the South Half (S½) of Section Thirteen (13), Township Thirty-five (35), Range Thirty-eight (38) West, in Stevens County, Kansas, which is located less than one-half mile from the said section 14, and closer thereto than any of the producing wells owned by respondent,

9. Republic Natural Gas Company, respondent, admits that it is producing gas from the wells located on lands described in the eight (8) units specifically enumerated in paragraph 8, above, and is taking gas therefrom, but if it be contended that Republic Natural Gas Company is taking gas from a common reservoir to which the well of the applicant is common to that of respondent's wells, then the respondent requires strict proof of such allegation, and in this connection respondent hereinafter makes certain allegations concerning said so-called common reservoir as a part of this answer.

Republic Natural Gas Company denies that it is the owner of the pipe line which crosses Section 14, as the term 'pipe

line' is usually understood and construed and as it apparently is attempted to be herein applied, or that it is [fol. 44] engaged in the purchase and transportation of natural gas in Texas County, Oklahoma. In this connection, respondent makes further allegations hereinafter, but states that it is possessed of a gathering line which it uses in connection with its business of the production of gas, and not otherwise, and the gathering of the same to a central point at which it sells its gas in the field as hereinafter alleged.

Republic Natural Gas Company admits that it has not produced any gas from the applicant's well, but denies that it is under any obligation to produce gas from applicant's well or to take, purchase, or produce gas therefrom, to which matter further reference will be made hereinafter.

10. In answer to paragraph 10 of said application, respondent denies that it is securing an unfair proportion of gas from the alleged common reservoir, or that it is draining from underneath the property covered by the leases owned by Peerless Oil and Gas Company, but admits that it is not taking gas from the Peerless Oil and Gas Company.

11. Respondent alleges that it does not know whether Peerless Oil and Gas Company has been unable to secure a market for its natural gas which it is capable of producing from its well, but denies that the applicant is suffering, has been suffering, or will continue to suffer irreparable loss and damage by reason of alleged drainage of said Section [fol. 45] 14 as aforesaid, and specifically denies that there is any duty upon this respondent, as a competitor-producer of natural gas, to purchase natural gas from the applicant, which respondent neither needs for any purpose nor desires to purchase.

12. Respondent admits the receipt by it of a letter dated March 27, 1944, marked 'Exhibit 1', and attached to its application. More particular reference to said matter will hereinafter be made.

13. Respondent admits the receipt of the letter attached to applicant's application, and marked 'Exhibit 2'.

14. This respondent denies applicant is entitled to a consolidation of the leases above described, or that Republic Natural Gas Company is obligated by any valid law or otherwise to consent to consolidation of its interest as a mineral owner with any other person or persons whatsoever.

15. Respondent denies that it has any duty to produce natural gas from its wells ratably with the well of Peerless Oil and Gas Company, or to take, purchase, and produce natural gas from the Peerless Oil and Gas Company's well ratable with the wells of Republic Natural Gas Company; and if any laws of the State of Oklahoma or orders of the Corporation Commission of the State of Oklahoma purport to compel Republic Natural Gas Company, under the facts and circumstances herein alleged, such laws, if any, of the State of Oklahoma are illegal, unconstitutional, and void, for the reasons herein particularly set forth; and if any of [fol. 46] the orders, directives of the Corporation Commission of the State of Oklahoma purport or are to be construed as requireming this respondent, engaged solely in the production and gathering of natural — and the sale thereof in the field, to purchase and take gas from the applicant when it neither desires to do so and does not need the same, then such rules, regulations, and directives of the Corporation Commission of the State of Oklahoma are unreasonable, illegal, void, and unauthorized.

16. Further answering the application herein, and by way of defense, the respondent alleges:

That the well of the applicant and the wells of the respondent herein in controversy, as well as a great number of other producing and nonproducing leasehold estates, are all located in what is known as the Hugoton gas field; that said gas field comprises and constitutes an area beginning near the Arkansas River in Finney and Kearny Counties, Kansas, and extending in a southerly direction to Guymon, Oklahoma, and beyond, and possibly into the State of Texas, comprising some one hundred fifty (150) miles in length, and that the field as usually understood, has a width at some places of as much as fifty (50) miles. The territory lying within such limits as defined has by the Corporation Commission of the State of Oklahoma and the Corporation Commission of the State of Kansas, and by the oil and gas industry generally, been accepted and considered as constituting said field and within which limits [fol. 47] the drilling of wells has proved productive of gas; that from quarter section to quarter section and lying with said area the actual drilling of wells has disclosed that the production in the said so-called Hugoton gas field is found in lenses so that in some of the wells as many as four or five

lenses will be encountered at the usual production depths, while in others only one or more such lenses will be encountered at the usual production depths, while in others only one or more such lenses will be encountered; that the geological conditions existing in said area are dissimilar to any other known to the respondent, and the gas produced in this area to this date has not been shown to be in any manner connected with any deposits of crude oil or petroleum; that drilling into said lenses, in some instances, tests have been made indicating that the various lenses and the production therefrom possess different temperatures, rock pressures, and British thermal unit in the varying lenses so that it appears that the source of supply of each of said lenses may or may not be distinct and separate from other lenses, and the lens or lenses which may be productive upon one section or at one of more wells may or may not be the same from which other and neighboring wells are producing natural gas; and this respondent alleges that the data available from said Hugoton gas field at this time is insufficient for this Commission to make any definite conclusion that the source of supply existing in any one or more of said lenses is common to the well of the applicant or the wells of the respondent.

[fol. 48] Respondent alleges that said so-called Hugoton gas field does not lie wholly within the State of Kansas or within the State of Oklahoma, and that the various lenses from which natural gas is produced probably lie partly within and partly without the State of Oklahoma and partly within and partly without the State of Kansas, and that whatever may constitute said common source of supply in the vicinity of said Section 14 may or may not be common to the source of supply lying wholly within the State of Oklahoma. That said Hugoton gas field constitutes a vas- area in which there are now more than five thousan- (5,000) proven locations upon which the owners of the lands and minerals will, in all reasonable pro- -bilities, be able to produce gas in the same manner as the applicant alleges its present ability to produce natural gas. That not only is there a variance in the number of producing lenses in different wells, but many of said lenses, even in the same area, vary as to porosity and permeability; that as further development is had it is very probable that additional producing lenses at varying depth and with producing conditions entirely different from those now known will be encountered,

and respondent alleges that the geological and geophysical data and the facts surrounding the production of the wells of the respondent and the applicant are so meager at this time affecting the entire Hugoton gas area that it is now impossible for the respondent or the applicant to determine or have this commission determine as to whether or not production being obtained from the wells of the respondent [fol. 49] is from the same source of supply as the well from which the applicant proposes to produce gas; that if said wells of the applicant and respondent are producing gas from the same lens or lenses, it is likewise impossible to tell whether production by respondent or by the applicant, exclusive of the element of compensated drainage and drainage of the more than 3,000,000 acres comprising said gas area is in fact and in truth causing drainage from one well to the other.

Therefore, respondent requires of the applicant strict proof of the fact that the lens or lenses penetrated by the wellbore of its well is common to the lens or lenses penetrated by the well bore of the various wells of the respondent, and if such is common, then that drainage uncompensated and exclusive of the drainage of said 3,000,000 or more acres has or will occur on account of the production of any well or wells of the respondent.

17. Respondent further alleges that notwithstanding any other matter herein set forth or alleged, that it is not obligated to purchase and take gas from the well of the applicant situated in said Section 14, for the reason that this respondent is not now, and never has been, and does not propose to become a common purchaser or a common carrier of natural gas; that it has not heretofore, does not now propose to engage in the business of buying natural gas from others for the reason that said respondent is solely and alone a producer of natural gas and engaged in the private business of drilling for and producing natural gas on its own account and from leases and properties owned by it.

[fol. 50] 18. For further defense respondent alleges that the facts which surround the Hugoton field and the circumstances under which it is producing and transporting gas therefrom is as follows:

(a) That in the so-called Hugoton gas field the local market is, and has been for many years, much limited by

the fact that said area is sparsely settled, has but few industries using a large quantity of gas, and of necessity the market for such gas, if the same was to be produced and sold, had to be obtained at points from a few to several hundered miles from said field.

(b) That natural gas cannot be stored like other mineral products but must be taken directly from the producing wells and delivered by pipe line to the consumer for immediate use, and in order to arrange for the necessary capital required to purchase and develope the gas reserved and to carry natural gas to remote markets it was and is necessary and essential either to go to such markets directly and contract in advance for the sale of a sufficient volume of gas to justify the construction of the pipe lines and the acquisition of the gas acreage and reserves to assure those with whom contracts were made that a sufficient volume of gas had been acquired so that such markets would at all times have a continuous, available, and dependable supply of natural gas as needed, to finance and constrict the gathering and pipe line acquire the acreage, drill wells thereon, and take all other necessary and proper steps to see that gas should at all times be available in a sufficient and dependable supply to satisfy the requirements of the ultimate consumer.

[fol. 51] (c) The Hugoton field is unlike any other gas field in Oklahoma, in the Mid-Continent field, or in any other field known to the respondent, in that the prospective life of said field and the enormous territory covered thereby extend far beyond in both acreage and extent the life of any other known field, and it is therefore highly desirable to pipe line companies who desire to purchase and transport gas from said field. That because of the necessity of building pipe lines for long distances to markets many miles away, practically all of the contracts with producers in said field are made upon the basis of the life of the field, and such life has been determined by many authorities and several commissions to be in excess of eighty (80) years.

(d) That long prior to the drilling of the well herein by the applicant, Peerless Oil and Gas Company, or the enactment of any rules or regulations by the Corporation Commission of the State of Oklahoma, the respondent entered into a contract with the Northern Natural Gas Company, a

corporation, to furnish said company with a sufficient volume of gas to be delivered by respondent in the Northwest Quarter of Section 19, Township 33, Range 36, Stevens County, Kansas, to meet part of its market requirements at points far removed from the Hugoton field. That said contract required the respondent herein, among other things, to maintain an open flow of gas equal to approximately four (4) times the amount of maxi-um daily deliveries. That in addition thereto, under said contract, respondent has been [fol. 52] required to dedicate and keep in good standing more than 50,000 acres of proven oil and gas acreage acceptable to the Northern Natural Gas Company for the performance of said contract. That based upon said contract, the respondent has acquired the sufficient proven acreage in the Hugoton field, has paid bonuses, and lease rentals thereon, drilled wells, constructed gathering lines, paid taxes, and other expense in an amount in excess of Three Million Dollars ($3,000,000.00) all of which was expended and necessary in order for this respondent to meet the obligation of the contract entered into by it with the said Northern Natural Gas Company, and but for the willingness of the respondent so to do, it would not and could not have obtained said market.

(e) That subsequent to the contract with the Northern Natural Gas Company referred to above, the respondent entered into a contract with the Cities Service Gas Company whereby the respondent obligated itself to furnish at the delivery point a large volume of gas to said company to be used by said Cities Service Gas Company and its affiliated companies in supplying distant markets at points far distant from the Hugoton field or the point of delivery.

(f) That the respondent has no connection with said Northern Natural Gas Company or any affiliate or subsidiary of said company, or the Cities Service Gas Company or any affiliate or subsidiary thereof, and so far as respondent knows, neither of said companies or affiliates or subsidiaries are the owners of any stock interest in this [fol. 53] respondent, and the sole connection between the respondent and the said Northern Natural Gas Company and Cities Service Gas Company in the purchase contracts above set forth.

(g) Respondent further alleges that the gathering system and other facilities owned by the Republic Natural Gas

Company in proximity to said Section 14 are connected to and form a part of its gathering system to enable it to comply with its contract, and that pursuant to said contracts of purchase of natural gas the respondent is required to and has dedicated the use of its acreage, wells, gathering and pipe lines for the purpose of fulfilling its obligations to said Northern Natural Gas Company. That said contracts constitute a valuable property right belonging to the respondent and the respondent has a right under the terms of said contracts to enjoy the fruits and benefits thereof.

(h) That respondent has through diligence as aforesaid, provided itself with sufficient acreage, producing wells, gathering lines, and other facilities to fulfill the contracts of sale above referred to, has no desire or need to purchase gas from the said Peerless Oil and Gas Company, and should it be required so to do would result in reducing the amount of gas which the respondent is producing from its own leasehold estates and wells; would deny the respondent the right to market its own gas to the exact extent it was required to purchase gas from the Peerless Oil and Gas Com- [fol. 54] pany, and would require a division of the private markets and market facilities of the respondent with others, all without any ownership or investment on the part of the said Peerless Oil and Gas Company.

(i) Respondent further states that it is not and never has been a common purchaser of common carrier of natural gas, and that it does not purchase any gas for the purpose of transportation or otherwise. That it holds the leasehold estates from which it produces its gas for its own purposes under the terms of oil and gas leases containing the following or similar clauses as relates to its obligations to its lessors under the terms of said leases:

> "The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found, and where not sold shall pay Fifty ($50.00) Dollars per annum as royalty from each such well, and while such royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof. . . ."

(j) That along the gathering lines of the respondent and in close proximity therewith there are many other leasehold estates owned by Peerless Oil and Gas Company and other

owners totaling more than two hundred (200), the exact number of which the respondent cannot give at this time, and should the Peerless Oil and Gas Company prevail herein and force a division of the markets and marketing facilities of the respondent, then the owners of said leasehold estates in close proximity of the respondent's facilities would drill thereon, tender gas to respondent under the [fol. 55] same circumstances as the same is tendered herein.

19. Respondent alleges that the facts and circumstances under which the well of the Peerless Oil and Gas Company was drilled and the purpose and intent with which the same was drilled is as follows:

(a) That the complainant, Peerless Oil and Gas Company, at the time it drilled the well at the location described in its application in Section 14, was fully cognizant and familiar with all of the facts as set forth in the preceding paragraph, and notwithstanding such knowledge, it drilled said well having no market outlet, but having the same opportunity and the same right to make the expenditures and invest the money, time, and talent necessary to the building of pipe line outlets and the acquiring of markets for the sale and delivery of gas from said well and/or other wells now owned by it or which may hereafter be owned by it as did the respondent.

(b) That the Peerless Oil and Gas Company is a large corporation, of great financial worth; that it is possessed of more than ninety thousand (90,000) acres of leases in the proven Hugoton gas field and produces wells other than the one involved herein' that it has ad-quate financial responsibility and facilities to obtain its own market in the same manner as the respondent, but does not desire to devote any of its finances to the building of the necessary facilities or the acquisition of markets at its own expense, [fol. 56] nor is it willing to dedicate either its facilities, leasehold estates, or otherwise bind itself for a term of years, nor to enter into contracts similar to other producers in said field.

(c) Respondent further alleges that at the time of the drilling of said well in Section 14 there was in effect a rule, regulation, and determination promulgated by the Government of the United States, and particularly by the agency known as the Petroleum Administrator for War, No. M-68,

under the terms of said M-68, to which reference is hereby made, it was necessary that the applicant should demonstrate to the Federal Government that it had a market for the gas before valuable and critical materials could be used for the purpose of drilling such wells and which materials could only be obtained upon permission of the War Production Board after the office of the Petroleum Administrator for War had made the appropriate findings. That said applicant made certain representations to the Petroleum Administrator for War, the exact nature of which this respondent does not know, but which it alleges upon information and belief was to the effect that it had a market to which such natural gas as it produced could be supplied.

Respondent further alleges that after the drilling of said well it developed that said Peerless Oil and Gas Company did not have a market notwithstanding it obtained said permit and drilled said well. That following the drilling and completion of said well this respondent having obtained [fol. 57] appropriate rulings from the Federal Power Commission under and by virtue of which it was determined that if this respondent would permit temporary use of its facilities as conduits for gas without charge of any kind or character to other producers having unconnected wells for the duration of the present war, plus a period of sixty (60) days, and if in so doing this respondent would not thereby be subjected to the jurisdiction of the Federal Power Commission, this respondent, although not legally or morally required so to do, offered at its own expense to build an extension of its gathering system to the meter run of the Peerless well in Section 14, and without cost or expense for the length of time permitted by the rules of the Federal Power Commission, to transport said gas to its delivery point in Stevens County, Kansas, and deliver the same to the Northern Natural Gas Company its only connection, or to any purchaser to whom the gathering systems of this respondent were connected; provided, only, that the Peerless Oil and Gas Company would make its contract for the sale of its gas at said delivery point, but that Peerless Oil and Gas Company failed to make any such arrangement, or to procure a purchaser as herein alleged.

(d) That said Northern Natural Gas Company to the extent of said dedication possesses an equitable interest in said property, ant that said Northern Natural Gas Com-

pany is not a party to this proceeding, and any effort to encroach upon said gathering lines by the Peerless Oil and Gas Company would be to deprive or injure the rights of the Northern Natural Gas Company in said dedicated rights [fol. 58] and property.

(e) That the purpose of the application herein is to require the respondent to share its private markets, contracts, and committments, and the use of its gathering lines and other facilities for the purpose of buying and transmitting gas of the Peerless Oil and Gas Company from the well described in the application, said Peerless Oil and Gas Company not having contributed in money, services, negotiations, skill, forethought, or otherwise, to the development of such markets, and the construction of such pipe lines and other facilities.

That the effect of the granting of the application herein would compel the respondent to buy gas which it has no need for and no desire to buy, thus reducing the amount of gas which it can produce in the exact amount that it would be required to buy gas from the Peerless Oil and Gas Company with the result that its investment would be impaired, its ability to make a return upon investment, to pay interest, taxes, administrative expense and other carrying charges would be destroyed, it would be subject to the hazard of sustaining enormous financial losses with the probable inability to carry out its contract with the purchaser.

That such result would inevitable follow from the granting of the application herein of the Peerless Oil and Gas Company, such company not having contributed in money, services, negotiations, skill, forethought, or otherwise, to [fol. 59] the development of such market and the construction of the facilities of the respondent.

20. The respondent further alleges that if Chapter 197 of the Laws of 1915 is valid and constitutional and applicable to the respondent herein, which it specifically denies, then respondent alleges that the term "natural flow" as used in section 4 and 5 of said statute means the open, natural flow of said wells and not otherwise. In this connection, respondent alleges that applicant did not complete said well in a manner so as to permit the ascertainment of its natural open flow, but caused the same to be acidized with a large quantity of acid which respondent alleges was greater than used in other wells in said area or field, with

the result that the open flow of said well is now greatly in excess of its natural open flow and any effort to prorate the production based upon open flow since acidization would be erroneous, fallacious, uncertain, and disproportionate to other wells in the Hugoton field; that if applied by the commission herein it would result in a disproportionate and unratable taking of natural gas from said well, would defeat the entire purpose of the conservation laws so far as the same are intended to protect correlative rights, and would destroy the correlative rights of royalty and landowners in the area from which gas will be drained by reason of the disproportionate quantity of acid used therein.

[fol. 60] 21. Respondent further alleges that from the beginning of its business until this date it has consistently carried on its business in a manner to avoid being subjected to the jurisdiction of the Federal Power Commission under the Natural Gas Act, and that it will maintain a legal and factual status as a producer only of natural gas; that it has not purchased and does not intend to purchase gas from any other producer, or do any other act which would subject it to the jurisdiction of the Federal Power Commission as a natural gas company; that it has not used the power of eminent domain, nor attempted to do any other act of thing inconsistent with its claims herein; that Republic Natural Gas Company and no other producer has monopoly of the Hugoton Gas Field, there being many companies which produce, purchase, and transport natural gas from said field.

22. That prior to September 29, 1942, there was instituted before the Corporation Commission of the State of Oklahoma, a proceeding numbered cause C. D. No. 817, entitled, In the Matter of the Application of J. J. O'Laughlin, Conservation officer, for rules and regulations covering the production of natural gas, fixing the market demand, and providing for the ratable taking thereof in the Hugoton field in Texas County, Oklahoma. That the applicant herein was a party to said proceedings, was in attendance thereupon and gave evidence therein; and that on the 5 day of May, 1943, order No. 16377 was issued in said cause; that in said proceedings this Commission asserted such juris-
[fol. 61] diction as it is possessed of over a portion of said Hugoton gas field located in the County of Texas, and State of Oklahoma.

In so far as pertinent to the issues herein, the respondent makes said order a part of this, its answer herein that Sections 15 and 16 of the findings set forth in said order provided as follows:

"15. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas, prohibiting the waste thereof, and providing that the Corporation Commission shall give due regard to the acreage drained by each well in prorating gas production so as to prevent any securing of an unfair proportion of the gas from the formation, and authorizing and directing the Corporation Commission to promulgate rules and regulations for the determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom, and to give to each owner or lessee an opportunity to produce all of the natural gas located in its original state under the property owned by him, and to enforce the acts; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and [fol. 62] directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

"16. That pursuant to said statutes the Corporation Commission in the year 1916 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this state; that same have been amended in only a few particulars since that time; that said rules and regulations do not establish a method for determining the natural flow of the wells, and do not take into consideration the acreage drained by said wells, and are generally insufficient to carry out the objects of the laws of the State of Oklahoma as to gas production from said Hugoton Field."

That said Corporation Commission has not yet determined what, if any, allowable under the terms of said order shall be assigned, or is assignable, to each of the wells of this respondent or to the wells of any of the other owners located in Texas County, Oklahoma; that respondent has not, therefore, at any time, taken from any of its wells any quantity of gas in excess of any lawful order of the Corporation Commission of the State of Oklahoma.

23. Respondent alleges that it has the legal right, so long as it can do so without waste (as such term may be and is legally determined and defined), to produce, gather, and transport in its own lines for the purpose of delivery to the purchasers thereof of such gas as it may lawfully produce, [fol. 63] and that it is under no legal or moral obligation to purchase gas from others or to divide with others its markets or marketing facilities. That if the effect of the order issued by the Corporation Commission in said docket referred to above, or in this case, or under the provisions of Chapter 198 of the Session Laws of Oklahoma of 1913, or the provisions of Chapter 197 of the Session Laws of The State of Oklahoma of 1915, or any other acts or statutes of the legislature of the State of Oklahoma, or under any of the general rules and regulations of the Corporation Commission of the State of Oklahoma are subject to a construction which requires the respondent herein to purchase gas from the Peerless Oil and Gas Company, or any other person, firm, or corporation, or devote its gathering facilities to the use of any other person, firm, or corporation, with or without compensation, or to divide its markets or contracts with the applicant, or any other person, firm of corporation, that such statute, order, rule, or regulation have the inevitable effect of taking the respondent's property without compensation and without its consent, and is in violation of the provisions of the Constitution of the United States.

Respondent further alleges that if any statute, order, rule, regulation, or directive, by whatever name known, is intended to be construed to limit the production by this respondent to supply its existing markets and contracts [fol. 64] (which this respondent does not understand to be the purport or effect of the order of this Commission of May 5, 1943) or if said statutes, rules, orders, regulations, directives, or other acts permit the production of gas by

others without market or market facilities, and permit such production to be substituted for gas production which respondent would otherwise lawfully be permitted to use, thereby requiring respondent to purchase gas which it would otherwise not purchase in order to fulfill its requirements and contracts, that the property of the respondent, together with contracts, rights, and privileges, without any process of law, without due process of law, and without compensation, such orders would be arbitrary, confiscatory, unreasonable, and in violation of the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

24. Respondent alleges further that if said statutes, laws, and the orders, findings, and determination by the Corporation Commission are subject to the construction (which the respondent does not admit), that the Corporation Commission is vested with the power and authority to compel this respondent to comply with that part of the prayer of the application, to-wit:

> "Requiring Republic Natural Gas Company to connect its pipe line to the well drilled and owned by the Peerless Oil and Gas Company aforesaid at a point designated by the Commission, and to produce natural gas from such wells ratably with the well of Peerless Oil and Gas Company, and to take and purchase natural [fol. 65] gas from the Peerless Oil and Gas Company's well at a price to be fixed by the Commission."

this *this* respondent alleges that all of said statutes, rulings, regulations, determinations, and laws are unconstitutional and void for the reason that the same violate and contravene the rights of the respondent granted to it under the terms of the Constitution of the State of Oklahoma, and that the same are violative of respondent's rights and particularly Section 2 of Article II, which provides as follows:

> "All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry."

And also violates Section 7, Article II, of the Constitution of the State of Oklahoma, which provides:

> "No person shall be deprived of life, liberty or property without due process of law."

And also violates Section 15, of Article II, which provides:

"No bill . . . nor any law impairing the obligation of contracts shall ever be passed."

And violative of Section 23, Article II, of the Constitution of the State of Oklahoma, which provides as follows:

"No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of ne- [fol. 66] cessity or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law."

25. Respondent further alleges that its pipe line facilities have been designated and builded for its sole use in transporting gas for any one else. That a considerable portion of the oil and gas leases which respondent owns is of short duration and requires the drilling of wells thereon and production in order that said leases may be extended beyond the primary or basic term of such leases. That should the application herein be granted and the pipe line facilities of the respondent be thus required to be devoted to the transportation of gas belonging to others, the ability of the respondent to drill additional wells and to extend said oil and gas leases beyond the basic period provided for therein, would cause the respondent to lose many of its leasehold estates as the division of its pipe line facilities would make it economically unprofitable and inadvisable to drill on said leases in which respondent has a large investment and which are valuable to it.

26. Respondent further alleges that by reason of the passage of the Session Laws of 1915 by the legislature of the State of Oklahoma above referred to, the Session laws of Oklahoma for the year 1913 were repealed and annul-ed, [fol. 67] and that no rule, regulation, order, finding, or directive can be issued under or by virtue of the laws of Oklahoma for the year 1913 specifically referred to, for the reason that said law, so far as applicable herein, no longer has any force or effect.

Respondent further alleges that if Section 3 of Chapter 198 of the laws of 1913 has not been repealed and is still in effect as a statute of the State of Oklahoma (which this respondent does not admit), then said respondent states

that it is not engaged in the business of taking gas from the gas field in the State of Oklahoma, but that all the gas which it produces and gathers in the Hugoton field is sold in said gas field to purchasers thereof who become possessed of the title to said gas and control over the same in said gas field, and not otherwise.

27. Respondent alleges that it is not a common purchaser or common carrier of natural gas, and as herein alleged, is engaged solely and exclusively in the business of producing and gathering natural gas and selling the same in the Hugoton gas field to purchasers who take and purchase such gas within said Hugoton gas field, and that it — not within the constitutional right of the State of Oklahoma, or of the Corporation Commission or of any other legislative body to so define the business of this respondent, or to convert the business of this respondent into that of a common purchaser of common carrier.

28. While not admitting that respondent is a natural gas [fol. 68] company as defined by and included in the terms of the Natural Gas Act of the United States, respondent alleges that if its business of producing its own gas and selling the same in the Hugoton field brings it within the terms of said Act, jurisdiction over the respondent is vested solely and exclusively in the agencies, bureaus, tribunals, and departments charged by the Congress of the United States with the administration of said Act, and This Commission has no jurisdiction over the respondent or power or authority to subject respondent to process or to make any orders, rules, or regulations affecting it.

29. Respondent further alleges that This Commission has no lawful power or authority to fix the price to be paid to the seller of natural gas; that such power has been expressly denied to the Commission.

30. With reference to the applicant's prayer and request that This Commission fix the price and the terms upon which respondent should be required to purchase gas of the applicant, the respondent states that This Commission is not possessed of any power, right, or authority to fix and determine said matters, and that if the legislature of the State of Oklahoma has attempted to vest such power in This Commission, then the respondent avers that said leg-

islature of the State of Oklahoma is not so possessed of such power, and that neither the State of Oklahoma under its police power or otherwise, nor this commission is vested or [fol. 69] can be vested with any right, power, or authority in the premises.

31. Respondent states that upon the receipt of the letter attached to said application, marked Exhibit '1', and on April 6, 1942, respondent replied to said letter of applicant accordingly as set forth in Exhibit '1' attached to this answer, which letter was duly transmitted to the Peerless Oil and Gas Company; that said letter sets forth the position taken by the respondent and its reasons for failing to accede to the demands of the applicant.

32. Except as expressly admitted by the respondent in this answer, the respondent denies each, every, and all of the allegations set forth in said application, and specifically denies that the applicant is entitled to relief in any of the particulars prayed for in said application.

Wherefore, having fully answered, the respondent prays that the relief requested by the applicant be denied in all particulars and this proceeding be dismissed.

Foulston, Siefkin, Bartlett & Powers, By Robert C. Foulston, of Wichita, Kansas, and Rizley and Tryon, by Ross Rizley, of Guymon, Oklahoma, Attorneys for Republic Natural Gas Company.

[fol. 70] EXHIBIT No. 1 TO ANSWER

April 6, 1944.

Peerless Oil & Gas Company, Alamo National Building, San Antonio, Texas.

GENTLEMEN:

Reference is made to your letter of March 27, which relates to a well now being drilled by you on the Blankinship land in Section 14, Township 6 North, Range 15 West, Texas County, Oklahoma.

As you know, this company is the owner of the minerals upon which your well is being drilled and has not and does not consent to any unitization thereof with the leasehold and mineral interests of others.

You are further in error in your assumption that this company possesses a pipe line as that word is usually understood and defined. This company is not a public utility and is not engaged in the buying or transporting of natural gas for hire, compensation, or otherwise, within the limits of the State of Oklahoma, and is not now nor has it been engaged in the business of purchasing natural gas from anyone. For obvious reasons, this company has always avoided being classified in fact or in law as a common purchaser or common carrier of natural gas or as a natural gas company.

This company, like yourself, is a producer of natural gas and sells gas only to purchasers with whom it is able to obtain a market for the commodity which it produces. [fol. 71] However, we do possess certain gathering lines which are owned and used in the gathering of natural gas from our own wells.

We cannot and do not treat your letter of March 27 as a valid tender to this company of gas which you desire to sell. We cannot admit that the so-called tender to us complies with the statutes or the orders of the Corporation Commission of the State of Oklahoma, or that a tender to us is proper under the facts and law.

Entirely aside from any legal concept of the matter it may be of interest to you to know that in the furtherance of the war effort, we have consented to a suggestion by the office of Petroleum Administrator for War, concerning a similar situation. In the above noted matter we have agreed that for the duration of hostilities and for a period of six months thereafter, we will without any hire, charge, or other compensation permit the use of our gatherine lines in the transportation of gas from certain so-called 'unconnected wells' to connection on our gatherine line with a purchaser with whom the well owners may make arrangements. This commitment is conditional upon a ruling and determination by the Federal Power Commission (requested but not yet received by us) that in so making available our gathering lines this company would not thereby be constituted a common carrier or common purchaser of natural gas nor have assumed a status of a 'natural gas company' as that term [fol. 72] is defined in the 'National Gas Act.''

Should it be of any accommodation to you we would be willing to attempt to work out a similar arrangement with

you, if such a program meets with the approval of the office of Petroleum Administrator for War.

In view of your recent statements to one of the counsel of this company in Chicago to the effect that you were not interested in selling gas at four cents a thousand and your gas had a much greater value for other purposes, we are somewhat at a loss to reconcile your position then with that apparently contained in your letter of March 27, 1944.

Yours very truly, Republic Natural Gas Company,
by ——— ———, President.

[File endorsement omitted.]

[fol. 73] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Transcript of Hearing

Chairman Bond: C. D. 902, Application. Peerless Oil and Gas Co., a Corp., vs. Republic Natural Gas Co. Ratable Purchase of gas from Peerless Oil and Gas Co. In Hugoton Field and fixing price. Are you gentlemen ready?

Earl Pruet: The applicant is ready, your Honor.

Robert G. Foulston: The Republic Natural Gas Company is ready.

Chairman Bond: You may proceed.

ARGUMENT ON MOTION TO DISMISS

Robert G. Foulston: If the Commission please, we have filed a motion in which we asked that the petition be dismissed on legal grounds. The first ground set out is that the application fails to state any facts, as distinguished from mere conclusions, that the respondent is either a common purchaser or common carrier of natural gas or that it is otherwise required to purchase natural gas from others under any existing law of the State of Oklahoma.

Further, the respondent contends that if, according to the legal conclusions stated in the pleadings the Republic Natural Gas Company is a common purchaser and a common [fol. 74] carrier of natural gas, then this Commission has no jurisdiction herein for the reason that in such case the power to regulate, control, and supervise has been taken

over and the exclusive jurisdiction is now controlled by the bureaus, agencies, and departments located in Washington, D. C, which administer the provisions of the National Natural Gas Act, and if such jurisdiction exists, it is exclusive and paramount to the jurisdiction of this Commission. We, of course, do not admit, but have always denied that Republic Natural Gas Company is a natural gas company under the National Natural Gas Act, and still maintain that position.

There are some allegations in the application of words found in the Oklahoma statutes which are mere legal conclusions and our motion asks that the facts and not the mere legal conclusions be pleaded.

After all, I think it will develop that this matter is essentially a legal question for the determination of this Commission and the Courts. Republic Natural Gas Company is solely a producer of a natural gas in the Hugoton field. It buys no gas from theirs and sells no gas outside of the recognized limits of the Hugoton gas field. If the Commission will entertain and grant the motion we can shorten the proceedings. We can get down to the gravemen of the proceedings.

[fol. 75] And if the facts upon which the application is based are plead, the legal question will be apparent.

Our second ground for dismissal is that in a proceeding previously filed before this Commission, In Re: J. J. O'Loughlin, being numbered C. D. 817, this Commission retained jurisdiction for the making of further orders or rulings that might be necessary. It was developed in that case that the respondent, Republic Natural Gas Company, was not and is not engaged in either the purchase of gas or the taking of gas from the Hugoton field. This Commission assumed jurisdiction in the O'Loughlin case and has reserved continuing jurisdiction. Therefore, these proceedings are in conflict with the O'Loughlin proceedings. Since this Commission has assumed jurisdiction over the Hugoton gas field, the present proceedings, it seems to us ought to be made a part of the O'Loughlin proceedings and not an independent one.

The third part of our motion, subdivision "Third", raises this question, and I think it is probably the paramount question in this litigation. Under the provisions of the Natural Gas Act passed by the Congress of the United States and the administration of the Natural Gas Act vested in the

[fol. 76] Federal Power Commission, there is described and recognized two separate characters of business; one, pipe line companies and similar businesses therein defined as natural gas companies; and the other, is that a producing company and the Act provides that it shall not apply to a producing company. It seems to me to follow without argument that if the Republic Natural Gas Company is engaged solely in the business of a producer of natural gas in the field, it is not a common carrier, but is a producer, and, hence, would not be under the jurisdiction of the Federal Power Commission. If, however, Republic Natural Gas Company is a common carrier it would be under the jurisdiction of the Federal Power Commission and not under the State Commission; and if it is under the jurisdiction of the Federal Government the State Commission has no authority to regulate our activities. We, of course, as I have stated, deny that Republic is under the jurisdiction of the Federal Power Commission.

Recently I spent more than ten days trying a case in which the Federal Power Commission attempted to assert their exclusive jurisdiction over the control and delivery of natural gas by a company situated exactly as the company here. It was the contention of counsel for the Federal Power Commission in that case that the production of natu-
[fol. 77] ral gas which ultimately found its way across the stateline was in interstate commerce and the Federal Power Commission had jurisdiction from the burner tip at a point in a distant state to the sands of the field. Our hope is that production in this field will be placed in balance. Again, I say, if jurisdiction exists in the Federal Power Commission on the facts as shown in the O'Loughlin case—if under those facts Republic Natural Gas Company is a common carrier and common purchaser it follows that the jurisdiction is in the Federal Power Commission and the Commission of Oklahoma and the Commission of Kansas have no control over the production of natural gas. And, again I say we deny the jurisdiction of the Federal Power Commission over Republic.

In the alternative, if the Commission fells we are not well founded in what I have said, then we ask that applicant make more definite and certain its allegations of fact showing under what statutes, rules, orders, and regulations as

set forth in the application it seeks relief. I want to read to you from this application:

> [fol. 78] "Republic Natural Gas Company is owner of a pipe line which crosses Section 14 and is now engaged in the purchase and transportation of natural gas in Texas County, Oklahoma, which Natural gas it transports and thereafter sells."

In the O'Loughlin case there was much testimony showing the character of the business of Republic Natural Gas Company. That company does not purchase gas in the field. It has lease hold estates and all leases held are generally the same form of leases under which oil and gas is developed and produced. As we are all aware, there is a difference between the provisions relating to royalty paid on oil production and that paid for gas produced. Our leases provides for continuance so long as gas is produced, and if not produced, the landowner is paid $50 per year on a well. If produced, we pay as royalty 1/8 of the proceeds of the sale.

We would like to get down to basic issued and that the application set forth on what basis it is contended Republic Natural Gas Company is required to purchase gas from the applicant.

[fol. 79] In the third part of the motion we ask that should the motion not be sustained that Republic Natural Gas Company be granted a continuance of the hearing. The applicant has not furnished the respondent a bill of particulars setting forth the facts with reference to its application, including the laws, rules, orders, regulations, and directives, and respondent is unable to determine upon what basis the applicant intends to proceed nor is respondent able to determine whether any of such statutes, orders, rules, regulations, and directives have any validity. In the present state of the proceedings Republic is not in a position to prepare its defense. The legal questions involved are important. They involve the question of the jurisdiction of the Corporation Commission to supervise and control the production of natural gas in the Hugoton field as well as all other fields in the state.

Furthermore, we wish to file a brief with the Commission and further set forth our legal claims. We have not had [fol. 80] an opportunity to prepare the brief and due to some personal reasons, we are not ready with the law. We

would like to have the matter continued and we would like to argue somewhat in full the matter of this question of conflicting, jurisdiction between the Federal Power Commission and the Corporation Commission of Oklahoma and the various statutes that control the question of jurisdiction. We are not facetious in this matter. We are quite concerned. The Supreme Court of the United States recently held that a distributing company was limited in income to 6½ per cent on investment and it would be impossible for this company or any other company engaged in a like business to continue operation on a 6½ per cent basis.

These are the points on our motion, if your Honors please.

[fol. 81] ARGUMENT ON BEHALF OF APPLICANT

Earl Pruet: If the Court pleases, counsel has entered his appearances and entered the appearance of the Commission in C. D. 817 and at that time raised no question as to the jurisdiction of this Commission insofar as the question involved in this application is concerned and having appeared and involved the jurisdiction in these proceedings. We think that it is not right to question this now, a matter arising under the laws of this state and the orders of the Commission insofar as our application is concerned as to Common Carriers and Common Purchasers. He says in one breath that we are not common purchasers and common carriers and in the next breath says that you do not have jurisdiction because we are common carriers and common purchasers. I say it makes no difference as far as this lawsuit is concerned whether they are common carriers or whether they are common purchasers in this state and under our Statute it clearly defines what a Common Carrier is. In Chapter 197, Session Laws of 1915, this act deals primarily with waste or the prevention thereof through conservation measures. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, [fol. 82] firm, or corporation, haveing the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow

of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom. In chapter 198, Session Laws of 1913, it refers to natural gas and deals primarily with ownership of natural gas and ratable taking thereof. This act deals primarily with the prevention of drainage, which is as follows:

"Section 1. All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of this surface under which gas is located in its original state.

Section 2. Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to [fol. 83] drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission, may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well."

In section fourteen of this application it reads: "That under and by virtue of the laws of the State of Oklahoma, Peerless Oil and Gas Company is entitled to consolidation of the leases above described and the owners of the minerals in said section are obligated thereafter to take their pro rata part of the one-eighth land owner's royalty."

[fol. 84] Section 3 of the 1913 Statute. Chapter 198 reads as follows: "Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas

or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in such gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

Section 4 reads: "Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars ($500.00), and each day each violation is continued shall be a separate offense."

Section 5: "Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent, or employee of any corporation shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed [fol. 85] five (5) years."

Now that statute is not prejudice and we do not have to prove that these respondents are common carriers or common purchasers in the field. All we have to prove is a well in the same source of supply and that these wells are not theirs and we are entitled to a Commission Order under terms as the Commission might subscribe if we cannot agree to those terms.

In that connection and in the most recent word from our Supreme Court is the case of Thomas vs. Utilities Gas Consolidated Gas Corporation which was granted by a three Judge Court by the Railroad Commission of Texas, the action of all joining was affirmed by the Supreme Court. The facts are clearly distinguished in the case before that Commission at that time. I talked to the attorneys on both sides of the case and they said that the reason that the case was affirmed was that there was no drainage proved, and could not be proved, whereas we have alleged that the wells are draining and will continue to drain. I want to read to the court some of the language in the Consolidated

Gas Utilities case which is clearly set forth. The third paragraph of the syllabus is as follows:

[fol. 86] "An administrative order made under legislative authority, prorating the production of natural gas, is not valid if shown to bear no reasonable relation either to the prevention of waste or to the protection of correlative rights of owners in the common pool, or if shown to be otherwise arbitrary."

[fol. 87] "The plaintiffs do not contest that the State has power to conserve its natural resources for the public, as well as to protect private rights, or that the Legislature has power to confer upon the Railroad Commission authority to make and enforce regulations to that end." . . .

And further in the same opinion,

"We assume, also," (This is Justice Brandeis speaking) "We assume, also, that the State may constitutionally prorate production in order to prevent undue drainage of gas from the reserves of well owners lacking pipe one connections. If proration were lawfully applied for any such purposes, the fact that thereby other private persons would incidentally and gratuitously obtain important benefits would present no constitutional obstacle. And the fact that plaintiffs' gas is to be sold interstate commerce would not preclude such exercise of the State's power."

If the Commission please, one of our statutes is predicated upon waste—I mean upon drainage from other property owners' reserves, and the Supreme Court of the United States in this case says that one of the things which a State can do is to pass laws authorizing its corporation utility commission to make rules and regulations preventing that drainage from the gas reserves of others.

[fol. 88] There is another distinction, and that is, under the laws of Texas, one owner of a gas well has a right to drain all the gas he can take from under his own land and from other property owners; whereas, the statute in this case—in this State is that when an owner has drilled a gas well into a common source of supply in Oklahoma and

thereby reduces that gas to his possession, who ever takes that gas is, under the laws of Oklahoma, guilty of a felony.

Now, as to the common carrier angle, our statute on the common carrier angle in this matter does not say that it has to be a common carrier . . . It says anybody who transports gas in this State for compensation, or hire or otherwise, is required to take ratably with the other owners of gas in the field.

Insofar as the common purchaser angle is concerned we expect to prove by introducing a part of the record which was taken here at the hearing in CD No. 817, and testimony given by the Republic's own President and Managing Officer that they buy gas from royalty owners in the Panhandle and transport it to Kansas and sell it, and collect therefor six cents per thousand cubic feet, and pay the royalty owners at the rate of one eighth of five cents per [fol. 89] thousand cubic feet, and by their own testimony this difference in price is for gathering and transporting the gas. We have an Oklahoma case which by analogy says, that sonstitutes them a common carrier. That is the Champlin case. Champlin had its own wells and its own refinery and transported its own oil to its refinery at Enid and also for two or three other people. Our Supreme Court held that they are common carriers, and we think that case by analogy makes these people a common carrier, and that they are required to take ratably in this field.

Now, there are one or two other questions on this Motion to make More Definite and Certain. We have alleged in our complaint that they buy and sell gas and they transport gas for compensation or hire and otherwise they have been draining our well in the Section in which our well is located, all of which facts are not known to the applicant but are well known to the respondent in this case. If they want to get technical, all right, but I understand the Commission is liberal in the matter of pleading, and certainly no District Court would require us to make our Complaint more definite and certain. They know better than anybody else whether they are buying or selling gas and operating a pipeline, and whether or not they are a common carrier and whether or not they are a common purchaser. We have subpoenaed here their records and expect to prove or attempt to prove [fol. 90] by them what the facts show with reference to their activities in the Hugoton field in Oklahoma. Certainly where we have alleged that the facts are peculiarly within

their knowledge and not known to us, that relieves us of any duty to amend our application and make it more definite and certain, and to allege facts that are known to them but not known to us and which are reflected by their records to which we have had no access.

[fol. 91] REPLY ON BEHALF OF RESPONDENT

Mr. Foulston: I want to be brief, if your Honors please, in reply. Apparently Mr. Pruet from what he has said has missed what I tried to convey to the Commission. In the first instance, I didn't try to argue the legal questions. I was only trying to point out the issues. I feel they are very much involved, particularly under the allegations of fact as set forth in the application. I will just read from this Consolidated gas Company case—since he has read from it—a sentence or two. It was the decision in this case which, I know, some lawyers have tried to argue around. They tried to argue around it in Texas and attempted to make very much the same distinction sought to be made here. Texas reaffirmed the doctrine of the Consolidated Gas Company case and drew a clear line of distinction. I want to call attention to this: the lines were constructed on private lands, not on public lands. To answer what Mr. Pruet, said, they are private property. The Court goes on and says in that case that they are common carriers. I don't think anybody has seriously contended that this company is a common carrier of gas. If this is his position, that we are a common carrier of gas, then I think the matter should arise on the pleadings. Here is what the Court said when it comes to taking private pipelines and private markets of these producers. Aside from the other issues, Justice Brandeis was not what you would [fol. 92] call a conservative on property rights:

> "Our law reports present no more glaring instance of taking of one man's property and giving it to another."

And ma-y cases were cited in support of it.

I have not made clear, apparently, to Mr. Pruet what I tried to say to the Commission in the first instance. In the

O'Loughlin case there is an effort to protect so-called correlative rights and to protect the field in the matter of conservation. All of those things are sought to be done. There is no question raised here as to the power of the Commission to say under what circumstances the Republic Natural Gas Company can produce only so much gas. We haven't questioned that matter. There was no suggestion in the O'Loughlin proceeding that we were going to make an effort along that line. It was stated over and over again before this Commission the position I have tried to make clear to this Commission. I want to read what they have asked in this case, and that is the basis of the distinction that I am trying to make:

> "Thus far you can produce your gas"

than to say:

> "You must break your line and buy gas from someone else."

[fol. 93] You cannot do that. That is the part of this case to which my motion applies. That is the gravemen of my argument. The Consolidated Gas Company case and other cases support my contention. It is an important distinction. It is an interesting legal history. An important distinction exists between the effort of the O'Loughlin case to limit production from the Republic Natural Gas Company wells or other producers' wells so as to prevent injury to someone else, and then to turn it around and try to do what is attempted here. And (reading from the application) "requiring the Republic Natural Gas Company to connect its pipeline to the well drilled and owned by Peerless Oil and Gas Company aforesaid, at some point designated by this Commission, and to produce natural gas from its said wells ratably with said well of Peerless Oil and Gas Company, and to take and purchase natural gas from said Peerless Oil and Gas Company's well at a price to be fixed by this Commission."

Your Honors have had that question of price up here before. Granting you can say "You cannot take from your well gas that cause- injury to someone else" and that the market demand may be distributed as in Kansas, no effort was ever made to get a Commission order to come into our

pipelines and gather system and require us to take somebody's else gas.

[fol. 94] The Commission might say to the Republic that "these wells cannot produce because there will be drainage", but that is far from saying: "The Commission will tell these parties at what price and on what conditions gas will be delivered and who will build the lines and how our private market will be appropriated." That is a major issue. The consolidation of royalty interest and lease interest is a minor issue.

As to the question of the power of the Commission to limit the taking of gas which will injure others or which will prevent drainage, our contention will be that there isn't any undue or uncompensated drainage and I think the proof will establish that this well is not being unduly drained and has not been injured by uncompensated drainage. As a matter of fact, the only tests taken have shown that it is contrarywise. There is an important distinction in this case. Here we are asked to connect—cut the gathering lines and abide by a contract which the Commission may make for these parties without their contributing to the cost. You may say: "You cannot take but so much gas, regardless of the market," but when it comes to complying with the prayer of this application, "You must con-[fol. 95] nect your gathering system and buy gas from some other producer in the field," you have a different question, it seems to me. We have made some investigation of these Oklahoma statutes. The statute cited by Mr. Pruet is interesting. He refers to the 1913 law. There has never been a decision of the Supreme Court here. It is a peculiar statute. I would like to spend half an hour arguing this and some interesting discussion will arise when read from that 1915 Act as well as the consideration of the title of the Act. I had hoped we would not get into this matter because after all it seems to me that the rights involved here have to do with the orderly development of that field and bringing markets into the field. The Commission knows the tremendous increase in market out there, with 5,000 locations in the proven area and there are over 200 locations along and within three miles of our gathering lines. If the Commission grants the Peerless application, it would take all of the market and all the gathering facilities and leave the Republic nothing for its investment of three

million dollars. That is the question I would like to argue. Under the Consolidated Gas Company case, and again to point out what Justice Brandeis meant when he said:

[fol. 96] "No more glaring instance of taking of one man's property and giving it to another.".

Mr. Pruet: There is just one case I want to call to the attention of the Commission. He said there had never been a case where anyone had been required to connect to a well and take gas. In the case of Oklahoma Natural Gas Company vs. State et al., 161 Okla. 104; 17 Pac. 2nd 488, and that case incidentally construed the 1915 and the 1913 Act which I have read to the Commission. The facts in this case are, a set of royalty owners, we will call them A. Their lessees had drilled a well on their property and had made a contract with the Oklahoma Natural Gas Company to sell gas from that well to the Oklahoma Natural Gas Company a certain amount of gas. Over here were royalty owners we will call B, and on that lease, there had been drilled two or three wells and from that source the Empire Gas and Fuel Company—or as it was later found, its successors Cities Service Company—was producing gas from those wells. The potentials on wells A were much higher than the potentials of wells B, but in spite of that fact the producers from Wells B were producing far more gas from those wells in proportion to the natural flow than the [fol. 97] Oklahoma Natural was required to take by its contract from wells A. The royalty owners A came before this Commission and made application to require the Empire to connect with wells A and to take therefrom in proportion to their take from the wells B and require also that the Natural Gas Company—the Oklahoma Natural Gas Company—who had a contract for the purchase of gas from Wells A to permit the Empire to take gas from Wells A. That case went to the Supreme Court and the order of the Commission was affirmed.

One difficulty in the Consolidated Utilities Gas Company case was that there had been no interpretation of the State law by the State Court. The Supreme Court, in the absence of such interpretation, said "We are bound unless we think it is irrevocably wrong to take the judgment of the lower Court which entered its injunction, particularly when they are all residents of the State involved." But in this Okla-

homa Natural Gas Company case our Supreme Court passed on the proposition. They said that the Corporation Commission of this State had a right to do everything we are asking the Commission to do in this instant case. That is a very lengthy opinion and you cannot read from it unless you read it all. They not only required the Empire to hook on to these wells and produce ratably but required the Oklahoma Natural, who had a contract, to let them do it. That [fol. 98] went to the Supreme Court and was affirmed, and I will say to the Commission at this time that they made the same contention—the Empire did in that case, and as far as the record shows, there was no proof to the contrary. The contention was they merely had a gathering system and were taking gas and selling it at various points—the same contention the Republic is making in this case, and in addition to construing the 1915 Act they made reference to and held that the provisions of the 1913 Act which I have cited to your Honors and which provides for a $500.00 a day penalty and damages for drainage, was not the exclusive remedy of the person whose gas was being drained.

. . . . . .

[fol. 99] Mr. Foulston: Just one remark: In the Empire case it is my understanding there was no question but what the Empire Natural Gas Company was a common carrier and the courts so held. I could argue that case but it would take considerable time. The Empire was in an entirely different position from our company. We don't have a piece of property—a foot of pipe outside of this producing area. We gather some gas and produce some gas and deliver it to somewhere else in the field. The facts are entirely different from the Empire case.

Chairman Bond: By reason of the issues involved, the Commission will give counsel time to argue and brief the case at the proper time.

Mr. Foulston: Very well.

Chairman Bond: The Commission overrules the motion and exceptions are allowed, and you may offer your testimony, and the Commission will hear arguments and give you time to file briefs.

Mr. Foulston: At this time I would like to file our response of record.

Chairman Bond: Leave is granted to file the response.

[fol. 100] OFFERS IN EVIDENCE

Mr. Pruet: I hand you herewith (handing to Reporter) application of the Peerless Oil & Gas Company, on file herein, which we asked to be marked as Exhibit No. 1, and introduced in evidence.

Chairman Bond: Received.

Whereupon, the Exhibit so offered and admitted in evidence is set forth on Page 5-A of this record, and made a part hereof at this point, without recopying same.

Mr. Pruet: I hand you herewith (handing to Reporter) Order setting said cause down for hearing, issued by the Corporation Commission, which I ask that you mark Applicant's Exhibit No. 2, and offer the same at this time, in evidence.

Chairman Bond: Received.

Whereupon, the Exhibit so offered and admitted in evidence is set forth on Page 18-A of this record, and made a part hereof at this point, without recopying same.

Mr. Pruet: Summons and service thereof and the proof of publication or publication notice, which will be Exhibits 3, 4 and 5 respectively, we ask to have marked as such and offer them in evidence at this time.

[fol. 101] Chairman Bond: Received.

Whereupon, the Exhibits so offered and admitted in evidence are set forth at Pages 20-A, 22-A, 25-A of this record and made a part hereof at this point, without recopying same.

Mr. Pruet: Will you stipulate with me that the Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in Oklahoma?

Mr. Foulston: Our Answer so admits.

Mr. Pruet: Will you stipulate the same thing with regard to the Republic Natural Gas Company?

Mr. Foulston: Our Answer so admits.

Mr. Pruet: Now, I have a mimeograph copy, furnished by this Commission, the Order No. 16377, in cause CD-817, which I desire to have marked as Exhibit No. 6, and offer it in evidence.

Mr. Foulston: No objection.
Chairman Bond: Received.

Whereupon Exhibit No. 6, so offered and admitted in evidence is in words, letters and figures as follows:

[fol. 101a] EXHIBIT No. 6

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 817. Order No. 16377

In the Matter of the Application of J. J. O'LOUGHLIN, Conservation Officer, for Rules and Regulations Governing the Production of Natural Gas, Fixing the Market Demand, and Providing for Ratable Taking Thereof, in the Hugoton Field, in Texas County, Oklahoma

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 29th day of September, 1942, at 10 o'clock, A. M., upon the application filed by the Conservation Officer and pursuant to an order of the Commission setting the same for hearing and notice published according to law; at which time the Conservation Officer appeared in person and by the Conservation Attorney, and various operators, producers, and purchasers of gas, and others interested in the Hugoton Gas Field appeared; and the Commission, having heard the testimony, continued the cause for further hearing on the 29th day of October, 1942, at 10 o'clock, A. M., at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers, and purchasers of gas and other interested persons appeared, and various statements having been made and additional testimony adduced, the Commission closed the case and took the matter under advisement. Thereafter the case was reopened and notice was given by publication as required by law, and same came on for hearing before the Commission on the 16th day of April, 1943, at 10 o'clock, A. M., and additional evidence was heard, and the Commission closed the case and again took the matter under advisement.

Now, on this 5th day of May, 1943, the Commission, having considered all of the testimony taken at all of said hearings, and being fully advised in the matter, finds as follows:

Findings

1. That notice by publication of the filing of the application herein the time and place of the hearings thereon, and the purpose of said hearings, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That there exists in Texas County, Oklahoma, a large gas field known as the Hugoton Field, which extends from the Kansas line on the north to the Texas line on the south, and approximately forty miles east and west; that said field extends north into the State of Kansas, and at least a short distance south into the State of Texas; that the probable producing area of said field in the State of Oklahoma covers most of Texas County, but the exact boundaries and extent thereof have not been determined with certainty and cannot be until additional wells have been drilled.

3. That the first gas well in said area was drilled in 1922; but the development of the field has been very slow owing to lack of market; that 55 wells have been drilled in said field, which are owned by the following companies: Republic Natural Gas Company, Cities Service Gas Company, [fol. 101b] Panhandle Eastern Pipe Line Company, Cabot Carbon Companies, Peerless Oil and Gas Company, Southwestern Public Service Company, Hagy, Harrington and Marsh, Allison and Sturdevant, and Home Development Company; that many of said wells have never had a pipeline connection and have never sold any gas; that some thereof are supplying gas to the General Atlas Carbon Company for use in the manufacture of a product commonly called carbon black, and to supply the City of Guymon and other small municipalities in the vicinity of said Hugoton Field; that a very small part of the gas is being taken by the Panhandle Eastern Pipe Line Company and shipped to markets outside of the State of Oklahoma.

4. That the production from the wells owned by the Republic Natural Gas Company is being transported by that

company through its pipelines to a common point near Hugoton, Kansas, and is there being sold to the Northern Natural Gas Company and shipped to consumers principally in the States of Iowa and Minnesota.

5. That there appears to be no uniform price for gas in said area; that General Atlas Carbon Company is paying on the basis of two cents and Republic Natural Gas Company is paying on the basis of five cents per thousand cubic feet at the well to the royalty owners; that Republic Natural Gas Company is selling its gas under a contract with Northern Natural Gas Company in Kansas at six cents per thousand cubic feet.

6. That the common source of supply of gas in said field is found at approximately 2600 to 2900 feet, and the average thickness of the producing formation is 40 to 45 feet; that there appear to be several separate horizons, although the evidence discloses that these are only breaks in the formation and that the whole producing formation constitutes one common source of supply; that the original shut-in pressure of said wells is approximately 435 pounds per square inch, and there has been very little decline in pressure since the first well was brought on to production.

7. That from present available information it appears that the Hugoton Gas Field is one of the largest and most important gas fields in the State of Oklahoma, with total reserves of approximately nine trillion cubic feet in that state.

8. That there are several pipelines extending from the Texas Panhandle across Texas County and into the State of Kansas, which are not connected with any of the producing gas wells in Oklahoma; that most of the gas which is being consumed from the general area in which the Hugoton Field is located is being produced from that part of the Hugoton Field located in Kansas or from the Texas Panhandle, although the gas produced in Texas may be almost entirely from a different common source of supply than that in Texas County.

9. That pressure differentials exist to some extent between the wells and leases in said field, which shows that there is some migration of gas, and that unless action is taken by this Commission these differentials will increase

and considerable inequities will be caused by drainage, and waste may result. It is a matter of common knowledge that gas in a formation migrates toward the wells that are on production and that drainage thus caused, which is not equalized by counter-drainage from different properties, results in disproportionate production by the wells on the respective properties.

10. That from production gauges made in said field it appears that the daily potential capacity of the individual wells varies from 4,000,000 to 50,000,000 cubic feet; that the Commission has not heretofore adopted a uniform method for determining the natural flow of the wells, and therefore there is no standard which the producers and purchasers in said field can apply to determine whether the gas is being taken ratably, as provided by the laws of the State of Oklahoma and the rules and regulations of the Corporation Commission.

11. That the present market demand from said field is approximately 24,000,000 cubic feet per day, and the capacity of the wells to produce greatly exceeds that demand, even though the wells are restricted to twenty-five per cent of their capacity.

12. That one well completed in said formation will adequately drain 640 acres without waste, and will produce all of the gas that originally underlaid that area; that all [fol. 101c] of the wells heretofore drilled in said field have been on a 640-acre spacing pattern, that is, there is only one well in a section consisting of 640 acres according to the United States Governmental Survey; that in order to establish a uniform pattern for drilling wells, each operator should divide his acreage into units, which should not exceed 640 acres and be wholly within a section; provided that, in the drilling of new wells, only one well should be drilled in one section, but in event more than one well is drilled, the allowable gas production should be limited and restricted as hereinafter set out in this order; and provided further, each operator should file with the Corporation Commission a verified statement of the description and amount of acreage in each unit owned by him.

13. (a) As in gas fields generally, there are in this field, within the units to be established by this order, many separately owned tracts of such small size that the cost of

drilling a well thereon would be too high to expect returns from the production and sale of gas therefrom sufficient to warrant such drilling if the owner is limited in production to the amount of gas which the statute allows to be produced from such tracts. Unless unitization of tracts within possible units is encouraged and royalty interests protected by an apportionment to the separate tracts of the gas produced through one well on a unit, the property rights of the lessees of such tracts and their royalty owners cannot be adequately protected. In such cases the one well will drain the gas, or an amount equal to the gas under the tracts within the unit, and thereby the property rights and equities of all concerned as prescribed by statute will be safeguarded and protected.

(b) That all owners, operators and producers should be encouraged to communitize all of the leases in a section as divided by the United States Governmental Survey for the reasons stated in (a) above, and in order that there may be uniform development of said field; that whenever the acreage, or any part or parts thereof, covered by two or more leases has been consolidated by the owner or owners to form an acreage unit under the provisions of this order, the consolidated unit should be considered as a single developed lease and all gas produced from the well thereon should be distributed to and between the separate tracts within the unit in the ratio that the acreage contained in such separate tracts bears to the total acreage of the unit, and the royalty accruing by reason of said production should be distributed proportionately and paid in accordance with said ratio.

14. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas, prohibiting the waste thereof, and providing that the Corporation Commission shall give due regard to the acreage drained by each well in prorating gas production so as to prevent any securing of an unfair proportion of the gas from the formation, and authorizing and directing the Corporation Commission to promulgate rules and regulations for the determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce

therefrom, and to give to each owner or lessee an opportunity to produce all of the natural gas located in its original state under the property owned by him, and to enforce the laws; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

15. That pursuant to said statutes the Corporation Commission in the year 1916 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this state; that same have been amended in only a few particulars since that time; that said rules and regulations do not establish a method for determining the natural flow of the wells and do not take into consideration the acreage drained by said wells, and are generally insufficient to carry out the objects of the laws of the State of Oklahoma as to gas production from said Hugoton Field.

16. That in allocating the gas production from said field, only developed acreage should be considered as developed acreage is hereinafter defined in this order.

[fol. 101d] 17. That in order to carry out the laws of the State of Oklahoma and to perform the duties and obligations placed upon the Corporation Commission, it is necessary to amend the general rules and regulations insofar as they affect the Hugoton Field and to adopt and promulgate additional rules and regulations for the production of gas from said field in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing any unfair proportion of the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

18. That in order to accomplish as nearly as possible the objects set out in the preceding paragraph, it is necessary to adopt a formula that will enable each well to currently produce its ratable share of the gas and to ultimately produce the approximate amount originally underlying said lease.

19. That in such formula many factors should be considered, such as natural flow, acreage, pressures, and porosity, permeability, and thickness of the formation, of which acreage is one of the most important; that in determining the ability of a well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered; that the formula hereinafter set out in this order, which takes into consideration acreage and deliverability, and gives due value to both, should be established by this Commission, so as to carry out the purposes of the laws of the State of Oklahoma.

20. That two allowable periods for each year should be established, one from April 1 to September 30, inclusive, and the other from October 1 to March 31, inclusive, with the idea of allowing purchasers to adjust their takes over long periods, and so that one report and order should cover the fall and winter months and the other the spring and summer months, thus dividing the periods of high demand from those of lower demand.

21. That the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in production of gas from the Hugoton Field, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage, and encourage future development.

Declaration of Policy

It is the intention, purpose, and policy of the Corporation Commission of the State of Oklahoma in issuing this order to promulgate rules and regulations as authorized and directed by the laws of the State of Oklahoma governing production of natural gas, providing a uniform method of determining the natural flow of wells and for ratable taking of gas, in order to protect the interests of the public and all parties interested therein, and to give each operator an opportunity to produce currently his proportionate part of the gas and ultimately to produce approximately the amount of gas originally underlying the surface of the land owned by him, and to prevent waste.

It is not the intention to limit or restrict the market demand for gas in the Hugoton Field, but only to prorate the same equitably and fairly among the producers.

[fol. 101e] Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall be effective as to the Hugoton Field, located in Texas County, Oklahoma, the productive area of which covers a large part of Texas County and extends north into the State of Kansas and perhaps south into the State of Texas, but the boundaries of which cannot be determined with certainty until additional wells are drilled; that all wells now producing therefrom are producing from the same common source of supply.

2. Each operator shall divide his acreage into units, which shall be considered by the Commission as the acreage drained by each well in allocating gas so as to protect the interests of all parties and prevent drainage. Each operator shall file a verified statement with the Oil and Gas Conservation Department as to the acreage contained in each unit owned, describing the acreage and showing the acreage that has been developed, and as to undeveloped tracts a like statement shall be filed prior to production therefrom, and if there be separately owned or unitized tracts within the unit such fact shall be shown in the statement filed. A unit as used in this order shall consist of not more than 640 acres which shall all be in one section according to the United States Governmental Survey; provided that, whenever a section as designated by said United States Governmental Survey consists materially less than 640 acres, the acreage in such section may be communitized with the acreage in contiguous sections containing materially less than 640 acres in order to establish one unit of approximately 640 acres. If a well is located on a tract which does not comprise an entire section, the unit shall be that acreage owned by the operator within that section; and if more than one well is located on any tract owned by one operator of less than 640 acres and within a section, the units in such tract shall be of equal surface acreage. If the acreage contained in any unit shall be increased or decreased at any time after the initial statement is filed

by the operator, he shall promptly likewise verify the same to the Conservation Department. Any operator in the field shall have the right to challenge the correctness of the statement filed by the operator.

3. In determining the units herein prescribed, only developed acreage shall be considered, and developed acreage shall mean any section on which there is one or more producing wells having a pipeline connection or other market outlet or the owner and operator of which is ready, willing, and able to make a connection. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to make a connection and the pipeline or other market outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order.

4. Whenever two or more leases, or parts of leases, are consolidated for the purpose of forming a unit as defined by this order, such consolidated lease shall be developed and operated as a single lease and the production of gas therefrom shall be distributed and allocated to the separate tracts within the unit in the ratio that the acreage contained in each tract within the unit bears to the whole and undivided acreage contained in the unit, and the royalty accruing by reason of said production shall be distributed, apportioned, and paid in accordance with said ratio.

5. Two allowable periods for each year are hereby established, the first to extend from April 1 to September 30, inclusive, and the other from October 1 to March 31, inclusive.

6. A formula shall be, and is hereby, adopted for the purpose of allocating the production of gas among the wells in the field, which formula shall consider acreage and deliverability, as herein defined in this order.

7. Deliverability of a well is the ability of the well to deliver gas against eighty per cent (80%) of the average field pressure. The deliverability factor of each well shall be determined by test, consisting of a measurement of the rate at which the well is capable of producing gas and delivering it against a back pressure equal to eighty per cent of the average closed-in well-head pressure of the wells in the field expressed in pounds per square inch gauge,

[fol. 101f] and designated herein as the deliverability standard pressure. During the test the flow of the well shall be fed into a pipeline, the pressure in which is maintained at a point lower than the deliverability standard pressure, and the well shall be chocked to maintain a back pressure on the well, determined by the dead weight gauge, equal to the deliverability standard pressure until the rate of flow of gas from the well measured by approved meter varies not more than one per cent in one hour; provided that, the rate of flow so measured at the end of the hourly period, expressed in MCF per day, shall constitute the deliverability factor of the well.

8. The deliverability of each well in said field shall be determined as soon as practicable after the effective date of this order by the Conservation Department of the Corporation Commission, and thereafter shall be determined at least once each year between May 1 and August 15, unless otherwise ordered by the Commission, or at such times as may be agreed upon by all the operators in the field, with the approval of the Conservation Officer and the Corporation Commission.

9. In order to determine the amount of gas that should be produced from each well for any allowable period, a field proration factor shall be determined by dividing the total anticipated production from the field for such period by the sum of the product of deliverability times the acreage factor for all the wells in the field; then multiply the field proration factor by the product of deliverability times the acreage factor for each well; the result reached by this calculation shall constitute the well's anticipated allowable in cubic feet for such proration period; provided, however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production, as above set out; then the Conservation Department shall immediately revise the allowables for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of acres in any unit.

10. If at the end of any allowable period there is an overproduction or underproduction of any well, same shall be carried as a charge against or a credit in favor of such well, and subtracted from or added to, as the case may be,

the allowable for such well for the next allowable period; provided that, any overproduction from any well during any allowable period which is not equalized by ratable overages from all other wells in the field, or which is not compensated for in the allowables fixed for other wells in the field for the next ensuing allowable period, or not otherwise made up within one year after the allowable period in which it occurred, shall constitute illegal overproduction from such well, and such well shall be shut in until such overproduction is made up.

11. Seventy-two (72) hour shut-in pressure tests of the wells in the field shall be taken by or under the supervision of the Conservation Officer. Such tests shall be taken at least once each year and at approximately the same time as the deliverability tests above prescribed; provided that, in taking said deliverability and pressure tests, the Conservation Officer shall give written notice to every operator and producer in the field sufficient to give them an opportunity to have a representative present. A written report of the deliverability and pressure tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Conservation Department, upon forms furnished and approved by the Corporation Commission. These reports shall be filed as soon as possible after taking of the tests.

12. The Conservation Officer shall prepare production schedules in accordance with the provisions of this order and submit the same to the Corporation Commission for its approval; and upon approval thereof said schedules shall take effect and the Conservation Officer shall promptly furnish to each operator and purchaser in the field a copy thereof.

13. In event the pressure of a well drops twenty-five (25) pounds below the average closed-in well-head pressure of all the wells in the field, such well shall be shut in and not permitted to produce until the pressure of said well shall build up to within twenty (20) pounds of the average closed-in well-head pressure of all the wells in the field.

14. All purchasers of gas in the field shall comply with the common purchaser provisions of the statute (Section

5, Chapter 197, Session Laws of 1915; Title 52, Section [fol. 101g] 240, Oklahoma Statutes 1941) by purchasing all the gas that may be offered for sale and which may be reasonably reached by their trunk or gathering lines without discrimination in favor of one producer as against another, and they shall not discriminate in favor of their own production; and shall take from all wells, which they can so reach by their own line or lines provided by the well owners, ratably in accordance with the ratable allocations to wells established by this order. If the Corporation Commission, or the Conservation Officer with the approval of the Corporation Commission, finds that it is impossible for an operator to offer or for any purchaser to make a connection to any pipeline or other market outlet, then such well shall not be considered in determining the allowable production of the other wells in the field; and in making the allocation such well shall not be taken into consideration; provided that, if a connection to a pipeline or other market outlet is made during any allocation period, the well shall be given its allowable for the remainder of said period. If any operator of any well shall refuse to produce the amount of gas allocated to said well by the Commission, or if the operator is unable to produce the entire amount by reason of insufficient connections, then the amount which such operator refuses to produce or is unable to produce by reason of insufficient connections shall be ratably distributed among the other wells in the field in order that the market may at all times be fully supplied; and if for a period of one year any operator refuses, or by reason of insufficient connections is unable, to produce his allowable, the underproduction created thereby shall be canceled, unless otherwise ordered by the Commission.

15. All wells shall be equipped with meters of approved type, and the amount of gas from each well shall be accurately measured; and the operator or purchaser of gas shall make a written report to the Conservation Officer each month of the amount of gas taken from each well during the preceding month.

16. The Commission shall hold regular semi-annual hearings in the months of March and September of each year, and at such other times as the Commission may order, after due and proper notice to all producers and purchasers, for the purpose of determining the anticipated production for

the ensuing allowable period, at or prior to which time each producer and purchaser shall notify the Conservation Department of the volume of gas necessary to meet his requirements for each month in the ensuing allowable period from said field; and the Commission shall at such hearing hear testimony as to the demand and any and all other pertinent matters, and make any orders necessary to carry out the provisions of this order and prorate the gas production from the Hugoton Field among the producers and royalty owners in such manner that each will receive currently his proportionate part thereof and ultimately recover the approximate amount of gas originally underlying his land, and to prevent waste in the production of gas therefrom; and upon the testimony the Commission shall authorize the issuance of schedules of production allowables for the wells in the field during said period.

17. This order shall be effective as of July 1, 1943, at 7 o'clock A. M.

18. Jursidiction over this cause is hereby retained for the purpose of changing, modifying, or altering this order, if at any further hearing in this cause, or from any other evidence adduced before the Commission it appears that such modification should be made.

19. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 5th day of May, 1943.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; —— ——, Commissioner. (Seal.)

Attest:

Carl B. Mitchell, Secretary.

[fol. 102] Mr. Pruet: We have here certain matters that have been pleaded and attached to the petition. One is a letter of March 27th, 1944, from the Peerless Oil and Gas

Company to the Republic Natural Gas Company, which was deposited in the United States Mail, by which we made demand on the Respondents in this case, consolidating the mineral interests which they own under our well, three-quarters of the section, with the minerals lying under the other quarter section and also in which we made demand on them to take and purchase gas from the Peerless well, located in Section 14, Township 6 North, Range 15 West, Texas County, ratably with the wells of Republic Natural Gas Company and for off-setting those wells.

Mr. Foulston: Are those exhibits one and two attached to your application?

Mr. Pruet: That's right.

Mr. Foulston: We admitted that in our Answer.

Mr. Pruet: Do you admit you received these notices?

Mr. Foulston: We do.

Mr. Pruet: We ask that this letter of March 27th be marked Applicant's Exhibit No. 7 and that it be offered in evidence, and the record shows that the Respondent received same in the due course of mail.

Chairman Bond: Received.

[fol. 103] Whereupon Exhibit No. 7, so offered and admitted in evidence is attached to applicant's Petition in this case and is set forth on Page 12-A of this record and made a part at this point, without recopying same.

Mr. Pruet: We have Exhibit No. 8, which is another letter under date of July 20th, making the same demand, together with the two return receipts and the receipts showing registered mail, which we ask to be marked Exhibit 8 and introduced, and the record shows that the Respondents admit they received in the due course of mail.

Chairman Bond: Received.

Whereupon Exhibit No. 8, so offered and admitted in evidence is attached to applicant's petition in this case and is set forth on Page 14-A of this record and made a part hereof at this point, without recopying same.

Mr. Pruet: I have a gentlemen out of the City who is on his way to Santa Fe. I would like to use him out of turn, with the Commission's approval and the permission of Respondent.

Chairman Bond: Very well.

[fol. 104] E. L. Bobo, a witness being called and having been sworn, testified in behalf of the Applicant as follows:

Direct examination.

By Mr. Pruet:

Q. State your name, please sir.

A. E. L. Bobo.

Q. What is your business?

A. I am with the Southwester- Public Service Company.

Q. In what capacity are you connected with that company?

A. Auditor.

Q. Are you familiar with the records of the company reflecting the purchase of gas made by your company and sales of natural gas made by your company in the Hugoton, Oklahoma, gas field?

A. I have purchased it, yes, sir.

Q. Has your company, in the past, had any transactions with the Republic Natural Gas Company, either with reference to a sale or purchase by Republic, or the sale or purchase by you from Republic, of natural gas in that field?

A. We purchased some gas from Republic.

Q. Tell the Commission when and over what period of time, what wells from the Republic, you purchased gas from the Republic in the Hugoton, Oklahoma gas field.

A. It was from the Wiggins and this well was drilled by A. J. Hardandorf.

Q. Do you remember the description of the property on which that well was located?

[fol. 105] A. No, I do not.

Q. Anyway, it was in Oklahoma and in the Hugoton, Oklahoma, gas field.

A. It's about two or three miles southwest of Guymon.

Q. What was the fee owner's name?

A. Wiggins.

Q. During what period of time did you sell gas to the Republic.

A. We purchased gas——

Q. During what length of time did you purchase gas?

A. About July 1940 until the end of '41, about a year and a half.

Q. What other companies have you purchased gas from, in the Hugoton, Oklahoma, gas field?

A. Wilcox Oil and Gas Company.

Q. What wells did you purchase gas from them?

A. The Hovey well.

Q. What companies in the Hugoton, Oklahoma, field, to what companies, if any, have you sold natural gas?

A. We have a contract with the Panhand-Eastern Pipe Line Company.

Q. How long has that contract been in effect?

A. Since about 1941 I believe it is, or '32.

Q. If you know, how much gas have you sold and have you been selling to that company?

A. No, I do not.

Q. They have a pipe line in the Panhandle of Oklahoma?

[fol. 106] A. Yes, sir.

Q. And they are buying gas from your company?

A. That is close to Baker, Oklahoma—yes, sir.

Q. For how long a period of time did you say they have been buying gas from you?

A. Since the early thirties.

Q. They are doing that at this time?

A. Yes, sir.

Q. You don't know the exact quantities?

A. No, sir.

Q. Do you know or recall at this time the price that you paid, that the Panhandle-Eastern Pipe Line Company has paid you for the gas it has purchased from you?

A. I don't know that.

Q. Now, as to any transactions of your company, in reference to the purchase and sale of natural gas in the Hugoton, Oklahoma, field, particularly as between your company and the Republic Natural, the respondent in this case, you testified to all you know about it?

A. That's right.

Q. That is all.

Cross-examination.

By Mr. Foulston:

Q. What was the point of delivery of this gas you purchased from the Republic?

A. Point of delivery was on our pipe line. I don't know how far it was from the well.

[fol. 107] Q. Was it within five or ten miles from where it was?

A. It was within about two and a half miles of Guymon.

Q. Of the well?

A. Closer to the well.

Q. How close to the well?

A. I couldn't answer that.

Q. Was it metered to your company?

A. It was, yes, sir.

Q. Who owned the meter?

A. I couldn't answer that either.

Q. You bought the gas and took the title to it at the point of delivery near Guymon?

A. That's right.

Q. What you did with the gas is the matter you testified to—later you resold the gas after you got possession of it from somebody else?

A. That's right.

Q. Actual transaction was, that the Republic did deliver you some gas from the Wiggins well in 1941, you took the title to it and paid them on the meter readings at or near the well?

A. Yes, sir.

Redirect examination.

By Mr. Pruet:

Q. To whom did you resell the gas after you purchased?

A. It went into our transmission system.

Q. Is that the name of the Company?

A. No, at that time it was the Cimarron Utilities Com-
[fol. 108] pany, it is a gas utility.

Q. It serves points in Oklahoma?

A. It serves about sixteen towns in Oklahoma.

Q. That's all.

Witness excused.

H. L. WILBURN, a witness being sworn and being called by Applicant, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Pruet:

Q. State your name to the Commission please.

A. H. L. Wilburn.

Q. What is your business or occupation?

A. I am cleaning out, servicing wells, production superintendent.

Q. How long have you been in the Hugoton, Kansas and Oklahoma, gas field?

A. About fourteen years.

Q. During that period of fourteen years, what has been your business and occupation?

A. Drilling wells, cable tool work, drilling in and supervision of drilling.

Q. During that period of time have you had considerable experience in drilling and in drilling in gas wells in that field?

A. Yes, sir.

Q. How many gas wells have you drilled out there?

[fol. 109] A. Oh, approximately two hundred wells I have worked on.

Q. You were one of the first drillers operating in that field?

A. Yes.

Q. One of the pioneers—what connection, if any, did you have with the drilling and the drilling in of the Peerless Oil Company's No. 1, Crump, which is located in section 14, township 6 North, Range 15 East, Texas County, Oklahoma?

A. I supervised the drilling of the well.

Q. Did you also supervise the drilling in and the treating of the well at the time of its completion?

A. Yes.

Q. Do you remember when that well was completed and put on production?

A. It was completed April 28th,—finished acidizing.

Q. From your knowledge and experience in drilling in a great number of wells in the Hugoton field, are you fa-

miliar with or do you know what is called or known as the virgin pressure of that field?

A. Yes, sir,—possibly within a few pounds, some variation of course.

Q. Approximately, in your judgment, what is and was the virgin pressure of that field?

A. I would say four hundred and thirty-five to four hundred and thirty-eight.

Q. There are variations above and below that.

A. Yes, sir, slight variations.

[fol. 110] Q. Now, getting down to the drilling in and treating of the Peerless Oil Company's No. 1, Crump, when was that well completed, if you know? About when?

A. April 28th, it was.

Q. Of what?

A. Of '44.

Q. Now, then, when you reached the producing formation at that time, you drilled the well in, how long were you engaged in drilling in the well?

A. Approximately ten days drilling in with cable tools, about seven days treating.

Q. Now, during the ten days you were engaged in drilling in the well, tell the Commission, during that period of time how long the well was flowing open flow?

A. I would say twelve days would be a good estimate of that.

Q. Twelve days would be the total,—during the drilling in and the treating?

A. Yes, sir, possibly a little more. We had some bad weather and due to conditions.

Q. Now, from your experience, over that period of time, tell the Commission what effect the blowing of that well for that period of 12 days would have on the normal stabilized pressure of the natural gas there at that well?

A. Well, these wells blow down in that long a time to quite an extent, under drilling in or flowing open, and they lost a lot of their pressure. They also lose a lot of it [fol. 111] in treating and cleaning up the well from acid and water to get the hole back in condition and it takes away a lot of the pressure and it takes a long time to build it back up.

Q. Now, then, at the conclusion of this period of time, during which you say the well flowed for twelve days, in which you were engaged in drilling in and treating the well,

at the conclusion of that time did you take the rock pressure or natural gas pressure at that well?

A. I took it a few days after the well had been treated and closed in.

Q. What was the pressure at that time?

A. As I recall, three hundred and eighty-six.

Q. Now, from your experience, and taking into consideration the period of time that this well had been blown, did that indicate to your mind the normal, stabilized, correct pressure of that well?

A. No, sir, it really didn't. We took it more to see what the presse-- was. It takes longer for the pressure to build up after treating.

Q. When a well has been blown and treated, how long in your judgment, how long would it take for that well to build back up to its norman stabilized pressure?

A. I would say thirty-five to forty or forty-two days, to reach its peak.

Q. Now, after you had taken that first test, at the conclusion of the drilling in and the treating of the well, tell the Commission whether or not you blowed the well at in-
[fol. 112] tervals, what intervals and how many times after that?

A. As I recall, I blowed the well four times after I taken the 386 rock pressure on it, in approximately seven or eight days.

Q. Within a week's time after that?

A. Yes, sir,—to clean it up.

Q. Do you remember what date you took that pressure which reflected a pressure of 386?

A. I would say about May 5th or 6th.

Q. May 5th?

A. Yes, sir.

Q. Then you blew it four times within the next week's time which would be between May 5th and about May 12th, is that correct?

A. Yes, sir.

Q. What effect would that have on the pressure that you took at the time you had finished treating the well, would it reduce it?

A. Yes, sir, that reduces your pressure at any time you blow them.

Q. Then, I take it, on May 12th, at the expiration of that week, in which you blew the well four times, the pressure

of that well would be lower than it was at the time you took the 386 pressure?

A. Yes, sir.

Q. Now, do you know when the—did you participate subsequently in a later test of that well?

[fol. 113] A. Yes.

Q. About when was the next time you tested it.

A. I would say about the 24th or 25th of May. I'm not definite about that.

Q. About a month after the well was brought in?

A. Yes, sir.

Q. Now, in taking into consideration the time you had blown the well, before taking that first test at 386, and the fact you had blown it to about May 12th, in your judgment and from the experience had on that well at the time you took the test on or about May 26th, had that well, had time to build up to its normal, stabilized pressure?

A. No, sir, it hardly had time. Some of those wells will build up a little faster, but ordinarily it didn't have time to stabilize.

Q. So, when this second test was taken about May 26th of this year, in your judgment the well hadn't at that time had time in which to build up to its normal, stabilized pressure?

A. No, sir, I would say, not.

Q. Now, getting back to the first test you took, by what method was that taken, one showing the 386 pounds pressure?

A. That was a spring *guage*.

Q. The test you took on the 26th of May this year, about that time, who participated in that test?

A. Dick Phillipe from Hugoton, Kansas, and Claud Thompson, from Kansas.

[fol. 114] Q. What method did you use in taking that test?

A. That was taken with a dead-weight.

Q. Do you know whether there is any difference—one test more reliable than the other?

A. Well, state men are using dead-weights, they're more accurate.

Q. Did the dead-weight test taken on May 26th,—what did it show the rock pressure was at that time on that well.

A. I believe that was 396.

Q. You say at that time, in your judgment, the well hadn't had time to build itself up to the normal, stabilized pressure.

A. I would say, not. Some of them will and some will gain a quarter of a pound a day until possibly the last ten days.

Q. Have you, in connection with any well that you have drilled in, left the *guage* on the well over a considerable period of time—or wells—what did that show, about how long it took the well to build up?

A. Yes, sir, I have completed wells that it took approximately forty days for them to reach their peak pressure.

Q. Were you out there to the well here recently when Mr. Capshaw took another test of the well?

A. Yes, sir, I was.

Q. Were you there when he took the test on June 9th of this year?

A. Yes.

Q. That was about two weeks after you had taken the test that showed 396?

A. Approximately two weeks, yes, sir.

[fol. 115] Q. That would be something like a little less than thirty days from the time that you had last blown the well?

A. Yes.

Q. One thing I omitted here—after you took the test of May 26th, 1944, what did you do with the well after that, if anything?

A. On the 26th? Nothing as I recall.

Q. Did you blow the well in, taken the open flow pressure?

A. Yes, sir.

Q. That was after you took the 396 pressure, on May 26th?

A. Yes, sir, we blew the well.

Q. How long did you blow the well at that time?

A. Approximately twenty-five minutes. We took a fifteen minute *guage* and a twenty minute *guage* and possibly took five minutes to close it.

Q. What effect did that have on the pressure of the well?

A. That would lower it to a certain extent.

Q. You were present when Mr. Capshaw took the test on June 9th?

A. Yes, sir.

Q. Do you know what that test showed?

A. Three ninety-nine, as I recall.

Q. 396.4 on June 9th?

A. Yes.

Q. That was less than a month from the time—less than two weeks from the time you had blown it after the test of May 26th, wasn't it?

[fol. 116] A. Yes, sir.

Q. And less than a month from the time you had blown it that week following the time you took the 396 test?

A. Yes.

Q. Then, in your opinion that test did not reflect the normal pressure, stabilized pressure of that well at that time?

A. No, sir.

Q. Were you present when Mr. Capshaw took the test in the last few days?

A. Yes, sir.

Q. Do you know what that test showed?

A. 399.4.

Q. What day was that, do you know?

A. That was a week Sunday. I don't recall the date of that.

Q. A week ago Sunday?

A. Yes, sir. I might be wrong on that. I'm a little confused about that date.

Q. Now, at that time the well—it has been more than a month or more than forty days at that time from the time the last test had been taken to the last time that the well had been blowed?

A. Yes.

Q. In your judgment, that figure of 399.4, is that about the normal, stabilized pressure of that well?

A. I would say that would be about the peak of that well.

Q. From the 9th of June to the 1st of October, that would [fol. 117] be July, August, September,—it would be three months and about twenty days?

A. Yes.

Q. Since the time that the well had been blowed last, that would have been ample time for the well to reach what is the normal, stabilized, correct pressure?

A. Yes, I should say it should reach its peak there.

Q. I believe that is all.

Cross-examination.

By Mr. Foulston:

Q. What did you say the normal virgin pressure was, Mr. Wilburn?

A. I estimated 435 to 438. There is some differential all over the whole field, but that is possibly a little higher——

Q. You are referring to the whole field?

A. Well, the general run of what wells I have worked on.

Q. You are referring, when you say the "field", to what is know as the Hugoton gas field, is that right?

A. Yes, sir.

Q. What area does that cover you are speaking of?

A. Well, I would say the general area—I have no——

Q. You include in the 'general area', the Hugoton field, from the standpoint of your discussion.

A. Well, I would say Texas County, Stephens County, all the production through there.

Q. Would you say from the Arkansas River down south to Guymon?

A. Yes, I believe I would.

[fol. 118] Q. That is about what—a hundred and fifty miles?

A. Yes, sir.

Q. Would you say—how far east and west would you include in your definition of the Hugoton field?

A. I would saw twenty to thirty miles, for an estimate.

Q. Now, it is true, is it not, in various places in that Hugoton field you have encountered different pressures, haven't you?

A. Yes, sir, there is some differentials in there.

Q. Are those different pressures, in your opinion, due to the different formations from which the gas is being produced, in some instances?

Mr. Pruet: We object as improper cross-examination.

Chairman Bond: He testified as to the virgin pressure, —counsel is simply fixing the boundaries. He may answer, if he knows.

Mr. Pruet: Exception.

A. Well, I don't believe I would be qualified to answer that, fair to this Commission.

Mr. Foulston:

Q. Has your experience been pretty much limited to one part of the field?

A. No, sir, I worked generally all over the areas.

Q. The first production in the north end of the field was less—the pressure in the north end of the field was considerably less than the present pressure you testified about [fol. 119] in this well?

A. In the north end you mean?

Q. Yes. Kearney County.

A. I don't recall as to—that there would be much differential there.

Q. You were asked about the producing formation. What sort of producing formation did you find or do you find in this well?

A. You have a lime pays.

Q. Is it all in one solid body?

A. No, sir.

Q. What is the characteristic of that field that is different from most fields, if any

A. Well yes, some pays are more porous.

Q. There are various pays encounter in a given well.

A. Yes, sir.

Q. How long a stretch or how much of the well may we encounter these pays in?

A. There is some difference in them. Some will carry gas in the upper zones—I would say——

Q. I mean, what is the extreme limit of the drilling in which you will find pay production?

A. I would say seventy to eighty or ninety feet, for an estimate. They will vary some.

Q. It is not a solid eighty or ninety feet of production as you will find in some pools.

[fol. 120] A. No, sir. Some of your sections may run pretty true but your porosity or pay does not respond.

Q. It lies in what they call 'lenses'.

A. Well, I couldn't answer that.

Q. You are an expert in the study of these wells?

A. I have drilled and completed a lot of them. I am not a geologist.

Q. Is it true that lenses or 'pays' you mentioned, in some wells you will find as many as four or five pays interspered among the other formations?

A. I would say four pays.

Q. In some pays you only find one or two.

A. Some cased off, some of the pays—the pays is undoubtedly there.

Q. You don't mean to infer you find the same number of pays that you drill in the Hugoton area, same number of paying stratas?

A. Well, they run very uniform over the whole area as to the lime sections. Of course some may not carry as much as others.

Q. You mean there are sections some of which carry and some which do not carry the pay production?

A. I wouldn't be qualified to answer that.

Q. Then, there is nothing in your testimony that should be construed by the Commission as having anything to do with the source of the production or the character of the production, is that right—I want to get clear—did you or did you not intend to testify to the source of the production [fol. 121] which is countered in the wells with reference to whether it is lenses or how it is formed?

A. I don't believe I would be qualified to discuss that.

Q. Your business is principally the finishing of these wells after they have been drilled?

A. Yes, sir, and the servicing.

Q. You say twenty-four days after the well was acidized, during the acidization process, after it was drilled, it was blown into the air?

A. Approximately twelve days. That could vary a little one way or the other.

Q. How much gas was it producing, how much was blowing into the air per day, in your judgment?

A. I couldn't answer that.

Q. Not a judgment?

A. Those wells blow down after they are drilled in.

Q. How much was going in the air, each day, on the basis of your estimate?

A. I don't believe I would be qualified to estimate that. I think some of the engineers might determine that. I am sorry, sir.

[fol. 122] Q. How much acid did you have in there?

A. 18676 gallons.

Q. 18676 gallons?

A. Yes I believe it was 18676 gallons.

Q. Are you connected with one of the acidizing companies?

A. No.

Q. Are you entrusted with the cleaning out of these wells?

A. Yes sir.

Q. Did you work with Claude Thompson?

A. Yes sir.

Q. And he was a competent man was he?

A. Yes.

Q. You didn't take any tests of the natural flow before the acid was put in?

A. We took the determined opening flow to determine the original flow.

Q. Without acid?

A. Yes.

Q. What was its natural flow?

A. I think it was six and a half million, that is of course not definite.

Q. You just estimated the natural flow at six and a half million?

A. Yes sir.

[fol. 123] Q. Did you estimate the open flow after the acidization?

A. No sir we took the open flow.

Q. Did you take the open flow after the acidization?

A. Yes sir.

Q. What did it do after it was acidized?

A. Well I don't recall as to our open flow, I think there is a record here in the Corporation Commission on that.

Q. There is a record made by the Corporation Commission?

A. Yes sir.

Q. Then you have no idea as to what particular formations or strata is being produced in that well as determined from the four or five in that field?

A. No sir, I say generally all of them.

Q. There are some wells and over a section there may be different depths and different strata?

A. Yes sir.

Q. That is all.

Witness excused.

[fol. 124] Thereupon, KENNETH ELLISON, of lawful age, having been duly sworn, testified as follows:

Direct examination of Kenneth Ellison.

Examined by Earl Pruet:

Q. State your name please.
A. Kenneth Ellison.
Q. Where do you live?
A. Oklahoma City.
Q. How long have you lived here?
A. I have lived here about twelve years.
Q. What is your business or profession?
A. Geologist and Petroleum Engineer.
Q. What college, if any, are you a graduate of?
A. I have a B.S. in Petroleum Engineering from Missouri School of Mines of the Missouri University. I graduated in 1925.
Q. What degree did you say you had?
A. B.S.
Q. In Petroleum Engineering?
A. Yes sir.
Q. Since 1925, tell the Commission what your business or occupation or profession is?
[fol. 125] A. I have been employed as Geologist by the Trans Continental Company, then the Wilcox Oil and Gas Company about four years, and the Anderson-Kerr in Oklahoma City in 1932. Since that time, I have been a Consultant Geologist.
Q. Have you had experience in appraisals?
A. I have done considerable work for the First National Bank here, Davo Oil Company and others.
Q. State whether or not you have had considerable experience doing geology work and experience in observing and in developing of the production of natural gas in this St[illegible]
A. We made a study in Central Oklahoma and on west, and maintain subsurface maps showing the structural position of all of the wells drilled and keep up to date maps showing all the development for this area.
Q. Are you more or less familiar with the gas producing structure of the Houghton Field in Oklahoma and Kansas?
A. I have made a study of it, principally in Texas County.

Q. Are you familiar with the Peerless, with the Number One Crump well in Texas County?

A. Yes sir.

Q. Now the Stenographer has handed you an instrument marked Exhibit Nine for the purpose of identification, I would like to have you examine that and tell the Commission who made it.

[fol. 126] A. It is a map I have prepared, and on it I have attempted to show the lease ownership, the area in red denotes the sections in which the gas wells are now producing and owned by Republic. The area shaded in yellow denotes the Peerless Oil and Gas Company Number One Crump.

Q. By that information and other information set forth in that map from what is that taken?

A. I checked the records of the Oklahoma Corporation Commission and also the Kansas Commission.

Q. The map that you have there, how many sections of land is shown in that map?

A. This map covers an area of fifteen sections.

Q. Just for the record, state by description of section, township and range what property is shown on the map.

A. This map covers section 13-14-15 of Township 35 South, Range 38 West and Section 17 and 18 of 35 South, 37 West both of these townships being in Kansas, also Section 13 and 14, 15, 16, 21, 22, 23 and 24 of Township 6 North, Range 15 East, and Sections 18 and 19 of Township 6 North, Range 16 East, the last two townships being in Texas County, Oklahoma.

Q. Now I believe you said the property shown on the map in pink or the property in which Republic Natural Gas Company has a lease and which they have drilled and which they [fol. 127] are now producing gas?

A. The records show that they are producing wells, the records also reveal the completion date, the initial open flow test, the first shut in pressure and the 1943 shut in pressure. The 1944 shut in pressure, 1944 deliverability of gas and shows the total gas produced to approximately September 1st, 1944, also shows on the map is the total amount of gas produced in each of the wells through May, June and July and August.

Q. Of this year?

A. Yes, it also shows the approximate location of the gas line of the Republic.

Q. The gas pipe line?

A. Yes sir.

Q. Do you know what size that it was at that time?

A. There was several at that time from four inches up to fourteen inches.

Q. Did I understand that the map correctly reflects that the Republic Gas Pipe Line crosses Section 14 into which the Peerless Number One Claims?

A. The line extends the full width of the section along the South line, it shows it be a eight inch line and it came to me that it has been changed to a ten inch or a twelve inch line.

[fol. 128] Q. That was taken from the records of this Commission as to the location?

A. That is right.

Q. What was the Peerless Oil and Gas Company producing from its wells?

A. It is not producing anything because of no connection.

Q. Now the names of each is at the top of each section on the map, for example, Section Eighteen up there in Kansas says Republic, REP Nat, is that Republic Natural, does that reflect the lease ownership of that section?

A. Yes sir.

Q. Do those names reflect the lease ownership as reflected by the records of the Corporation Commission of the State of Oklahoma?

A. It does, except that the records reveal the Company is the operator, they might now own the full one hundred per cent lease interest, they reveal that they are the operator and as such name them under those names.

Q. And they would have in most instances the majority of the leases?

A. Well I would not know about that.

Q. Now all of the information in regard to the various leases and lease ownership locations of wells and location of property lines, date of open flow tests, shut in and deliver-[fol. 129] ability and gas production of various wells and value at the rate of five cents per thousand cubic feet these items of information you obtained from the records of the Corporation Commission of this State?

A. From this State and the State of Kansas.

Q. Mr. Ellison are you familiar with what is considered among gas producers and operators what is known as the virgin pressure in the Hugoton Field?

R. E. Foulston: I object to that because of calling for hearsay testimony.

Q. Are you familiar with the history of the development of the Hougton Field in Oklahoma and Kansas, or what is known as such to such an extent that you can testify as to the virgin pressure of that field?

A. I personally have not taken any of the tests, all I am familiar with is the records of such, showing the entire Hougton Field.

Q. Do you know what the records of this Commission show as to the Hougton Field?

A. I am acquainted with them, generally speaking yes.

Q. Based on that knowledge, what is your opinion as to what the virgin pressure of that field is?

A. After studying those records, I have come to the conclusion that the virgin pressure in that particular area was [fol. 130] apparently 440 pounds. Some of the wells are as high as four hundred fifty one pounds and some are around four hundred thirty-five pounds or four hundred thirty-six pounds.

Q. State whether or not productivity of the gas formation is based on well pressure?

A. What is the question?

Q. What will determine whether the gas pressure will produce gas?

A. Pressure and volume.

Q. At what pressure, in your opinion will the well produce for commercial purposes?

A. I think approximately 440 pounds.

Q. Then there is a producing pressure, a virgin pressure of 440 pounds down to the abandoned pressure of 40 pounds?

A. Yes sir.

Q. And whether that is reduced to that pressure at all but shown longer production?

A. In commercial quantities.

Q. What does the production of gas pressure when does that indicate as taken lease?

A. It indicates gas was withdrawn form the reservoy and the volume left in the reservoy has been decreased.

Q. Now we will start to give the Commission a history of [fol. 131] this particular area, start with the wells first drilled in.

A. Of All of the wells shown on this map?

Q. Of all the wells shown on that map?

A. Listing them in chronological order first: Republic Mitchel Number one, Section 18, Township 35 south, Range 37 west.

Q. Second from the top?

A. Well in the northeast corner of the map.

Q. In Kansas?

A. Yes sir.

Q. When was that drilled in?

A. Completion date shown was August 31, 1930.

Q. What do the records show as to the first shut in?

A. I might as well go ahead and list all of them, the open flow was 24,640,000 cubic feet and first shut in pressure was 440 pounds and first shut in 390.5 pounds, in 1943 and 384. pounds in 1944.

Q. Just tell the Commission the reduction and shut in pressure in that well during the period of time from 1930 to 1944?

A. There has been a reduction in pressure of forty-six pounds.

Q. Now then, take the next well in chronological order:

[fol. 132] A. I might state the volume has been reduced to that extent during the time it was reduced to forty-six pounds and was producing 3,423,915,000 cubic feet of gas.

Q. How did you compute it, at the rate of five cents?

R. E. Foulston: I would like to object to that as incompetent, irrelevant and immaterial.

Chairman Bond: What is the purpose of showing the price the Commission doesn't have the price before them, if you were sueing for damages it would be competent.

Earl Pruet: I am inclined to think that it has no particular bearing and I withdraw the question.

Q. Take the next well.

A. The next well shown here in the upper left hand corner of the map is Republic Natural Gas, Hamilton Number One, Range 38 West, located in Kansas.

Chairman Bond: Are you gentlemen going to ask the Commission to fix the price of gas?

Earl Pruet: We are going to ask that if the parties do not agree if they do, then the Commission will not have to fix the price. If the parties cannot agree the Commission shall fix the terms as it sees fit.

Chairman Bond: The Commission, since the question has [fol. 133] been withdrawn, let the question go now, but if you are going to ask the Commission to fix the price of gas, the question may be proper.

Earl Pruet: It is not a price necessarily that would be secured for this gas, it has varied from the contracts I have seen.

Chairman Bond: You will have to prove the price.

Earl Pruet: Our contention is that the price is not high enough, there is all of the evidence as to what is being paid, we can't help it that the price is no higher, I am inclined to say that it is not proper here at this time and I am perfectly willing to withdraw the question.

Earl Pruet continues with the witness.

A. The Completion date was May 24, 1938, with 25,181,000 cubic feet. The first shut in pressure was 443 pounds, 1943 shut in pressure was 387.4 and 1944 shut in pressure was 388 pounds.

Q. Now what pressure has that well lost during the time it has produced?

A. A decline of thirty-five pounds in pressure and during that time this well produced 1,622,414,000 cubic feet.

Q. Now what amount of gas has been produced through the months of May and August inclusive?

A. 67,145,000 cubic feet.

[fol. 134] Q. Now take the next well in chronological order, the date of the completion, the first pressure, the present pressure, and the total production.

A. The first one is Republic Natural Gas Company, known as Blackmere, in Section 15, Township North, Range 15 east, in Texas County, Oklahoma.

Q. What is directly west of Peerless?

A. Yes, sir.

Q. What date was that drilled in?

A. Completed in October 24, 1938.

Q. Now taking into consideration the fact that the Commission has entered an order spacing wells and making 640 acres the amount of space in which to drill, state to the Commission whether that well is a direct offset, whether that is in Section 14.

R. E. Foulston: I object to that question.

Chairman Bond: Sustained, let the witness testify where the well is located.

Earl Pruet: I think to a certain extent it is a matter of expert testimony as to whether this constitutes an offset.

Chairman Bond: Qualify him and then let him state if he knows.

[fol. 135] Earl Pruet: The Commission's order is in evidence, it makes it as a matter of law, I will withdraw the question.

Q. Will you go ahead and give the other information I asked about the well?

A. 21,109,000 cubic feet was the total production to September 1st, 1944, and the first shut in pressure was 415 pounds, the 1943 pressure was 396.2, 1944 was 386.8 pounds or a decline in pressure of 29.2 pounds.

[fol. 136] By Mr. Pruet:

Q. Mr. Ellison, state whether or not that well is located in the approximate center of Section 15 which adjoins Section 14 directly on the west?

A. It is as you stated.

Q. And it has been producing there from October 3, 1938, down to date?

A. Correct.

Q. As shown by the record of this Commission?

A. That's right, and the total amount of gas produced to approximately September 1st, 1944, has been one billion, six hundred forty five million, three hundred twelve thousand cubic feet.

Q. That is almost one and three quarters of a billion feet —cubic feet?

A. Almost.

Q. What is the next well? The next Republic well?

A. The next well is the Republic, Bunger No. 1, which is in section 13-6-16 East, Texas County, Oklahoma. That is the well immediately to the East of the Peerless Oil and Gas Company's Number One Crump lease.

Q. That is in Section 13, immediately adjoining Section 14 on the east?

A. Yes.

[fol. 137] Q. From the information on that map—Give us the information on that well.

A. The completion date on that well is October 24, 1938, having an open flow test of 23 million 452 thousand cubic feet. The first shut in pressure reported was 423 pounds.

The 1943 pressure was 396.2 pounds. The 1944 pressure was 391.4 pounds. In other words, there has been a rock pressure decline there, of about 31.6 pounds. While that pressure has been reduced to that extent, the well has produced a total amount of two billion, four hundred seventy-one million, two hundred and sixty-one thousand cubic feet of gas.

Q. What production has been had from that well during the months of May, June, July and August, inclusive, this year?

A. The total amount of gas produced for those months has been one hundred thirty-one million forty-four thousand cubic feet.

Q. Go on to the next two wells.

A. The next well, which is the fifth well completed in that area, is the Republic Judd Number One, located in Section Twenty-Four, Six North, Range 16 East. That well was completed October 25, 1938, having an open flow test of nineteen million, one hundred twenty-eight thousand cubic feet. The first shut in pressure was 428 pounds. The 1943 [fol. 138] shut-in pressure was 398.9 pounds. The 1944 shut in pressure was 399 pounds, making the difference in shut-in pressure from the beginning up to 1944 of 29 pounds. While that pressure was being declined to that extent, the well produced a total of one billion, nine hundred fifty-one million, three hundred sixty-seven cubic feet. For the months of May, June, July and August inclusive, this well produced one hundred eight million three hundred eighty-eight thousand cubic feet.

Q. That section diagonally adjoins Section 14 in which the Peerless well has been drilled to the southeast and diagonally?

A. That is the correct location.

Q. Proceed with the next well.

A. The next well was Republic, Dulabahn well. That is section 21, Township 6 North, Range 15 East, Texas County, Oklahoma. That well was completed November 3, 1938, with an open flow test of nineteen million, nine hundred twenty thousand cubic feet. The first reported shut in pressure was 420 pounds. The 1943 shut in pressure is 395.7 pounds. The 1944 shut in pressure is 390 pounds, making the decline in rock pressure thereof, of thirty pounds. That well has produced a total of One billion, seven hundred thirty-five million, five hundred eighty-one thousand cubic

[fol. 139] feet of gas. During the months of May, June, July and August, the reported amount of gas produced totals ninety-nine million, three hundred eighty-seven thousand cubic feet.

Q. What, in your opinion, does the decline in pressure at those wells and the amount of gas that is shown to be produced from each one of those wells show to have taken place in that area there that you are testifying about?

A. It shows that the common reservoir is being depleted of its gas.

Chairman Bond: The Commission will recess until 1:30 P.M. (Today, October 10, 1944.)

Thereafter and at the hour of 1:30 P.M., October 10, 1944, The Commission reconvened, all parties appearing as heretofore stated.

Chairman Bond: Gentlemen, proceed.

Thereupon, Mr. Kenneth Ellison was recalled to the witness stand for further direct examination by Mr. Pruet.

Q. From those facts you have testified about as shown by the Corporation Commission's records here with reference to production had from the Republic Natural Gas Company's wells, tell the Commission what the average reduction of pressure of those Republic wells has been from the time of their initial pressure—from the time the initial [fol. 140] pressures of those wells were taken, down to the last pressures shown—the average.

A. If you average the 1944 rock pressure for the eight Republic wells, it calculates out at slightly less than 400 pounds, and around 440 pounds initial pressure for that area. That would give an average decline for all that area of forty pounds.

Q. Now, based on your knowledge of the producing formations out there in that particular locality, and the records of these various Republic wells you have testified about, and the virgin pressure of the field, as has been shown here, what in your opinion was the virgin pressure of the Peerless Well there before any—I will put it this way—of the gas producing structures were located under Section 14?

Mr. Foulston: That is objected to as immaterial. We are not interested in virgin pressure here.

Mr. Pruet: We are interested in it.

Chairman Bond: The witness may answer if he knows.

Mr. Foulston: May I inquire as to Exceptions? I notice Mr. Pruet saves exceptions. What is the procedure here as to exceptions?

Chairman Bond: Each side will be allowed an exception to the rulings of the Commission. Our usual practice is the same as in the District Court as to exceptions. Each side will be allowed an exception to the rulings.

[fol. 141] By the Witness:

A. You spoke of virgin pressure. Do you mean the pressure before any well had been producing in the Hugoton gas field?

By Mr. Pruet:

Q. Yes.

A. I think a fair estimate on that is 440 pounds.

Q. At the time this first Republic well was drilled in, state in your opinion from your knowledge of this field, and the producing strata, and the facts reflected here, what was the pressure of the gas producing formations lying under Section 14 as compared to the initial pressures of these Republic wells at the time they were drilled in?

A. The Republic wells of course were drilled at different times. They had different pressures at the time they were completed. The pressure for this Peerless well is shown to be about 399 or 400 pounds pressure at the time it was completed. That pressure is comparable with one or two of the wells to the southeast. Compared with the wells to the northeast and northwest, the pressure is some twenty or thirty pounds less than it was in the Republic wells at the time they were completed.

Q. What in your opinion has been the reduction in gas pressure in the gas producing formations lying under Section 14 since the time that the first Republic well shown on [fol. 142] this map was drilled in?

A. That decline—the first well, which is the Republic Mitchell No. One had an initial pressure of four hundred thirty pounds and which still probably wasn't the virgin pressure, and comparing the Peerless well with that well, there is a difference of initial pressures of thirty pounds.

Q. Tell the Commission in your opinion whether or not the pressure of the gas producing formations lying under Section 14 have been reduced by the operation of the Republic wells shown on the map?

A. Absolutely. The pressure has been reduced considerably and considerable gas has consequently been taken out. If no gas had been taken out from surrounding wells, the pressure on the Peerless well initially would have been considerably greater than 400 pounds. That pressure just doesn't drop unless some gas is withdrawn. You got to remove gas to decrease the pressure.

Q. State in your opinion whether or not these Republic wells shown in the map, each and all of them, since they have been drilled have been draining the gas under the surface of Section Fourteen out of a common source of supply?

A. The wells closest to this tract naturally are the ones which have been benefitted the greatest by this withdrawal [fol. 143] of gas and they are the wells that are responsible for this reduction of pressure of 40 pounds in the Peerless wells. Naturally they had to be the wells in that vicinity.

Q. Whose wells are they?

A. There are eight wells here offsetting and nearby the Peerless that belong to the Republic Natural Gas Company.

Q. Tell the Commission whether or not these wells of the Republic have been draining the gas from underneath the surface of Section 14 in which the Peerless No. One Crump has been drilled, and from the same source of supply into which said well has been drilled, from the time those wells went into production, down to date.

A. They have drained it to the extent they have reduced the Pressure forty pounds. That pressure wouldn't drop on the Peerless by shutting it in, if gas wasn't withdrawn in some nearby area.

Q. Assuming the Peerless was drilled in, and ready for production on April 28, 1944, tell the Commission, in your opinion, whether or not the Republic wells shown on that map have been, since the 28th day of April, 1944, basing that on your information of the field and the information you have here, will you testify whether or not those wells of the Republic Natural Gas Company have, since April 28, [fol. 144] 1944, been draining gas from underneath Section Fourteen and from out of the same common source of

supply thereunder and into which the Peerless Number One Crump well has been drilled?

A. Four months' time is hardly sufficient time to show any appreciable amount of gas that has been withdrawn from that Section; however, the Republic in that interval has been producing considerable gas—a considerable amount of gas, and there would be a considerable amount of gas that would be coming from Section Fourteen.

Q. Into which the Peerless well has been drilled and out of the same source of supply?

A. Yes sir.

Q. Now, taking into consideration the various items and the information you have about this particular area here, the original pressures of the various wells that have been drilled, the thickness and porosity of the producing structures in this common source of supply, can you, and have you computed what the anticipated ultimate recovery of gas from Section Fourteen is or would be, taking into consideration the period of time at which the first well in the field was drilled, and down until this Section would be no longer commercially productive?

A. In other words, from the time of the initial pressure, [fol. 145] down to abandonment pressure?

A. Yes.

Q. What would be the ultimate amount of gas that could have been produced—that's from that Section?

A. Yes.

—. ——

A. I can calculate that, yes sir.

Q. Will you do that, please?

A. From a study of the electric log run by the Halliburton Cement Company of this Peerless Oil and Gas Company Number One Crump well, it appears that there is a total thickness of effective pay gas formation of eighty feet. Of this eighty feet, an effective porosity of 12½% has been used in the calculation. To compute the volume of the opening or porous space in this formation, it is calculated by multiplying the per cent of porosity by the thickness of the formation by the area of 640 acres to determine the volume of the formation. By using the initial rock pressure of 440 pounds and also using the abandonment pressure of 40 pounds, the ultimate recoverable gas for that section of land from the beginning to end would have been eight billion, two hundred fifty million cubic feet of gas.

Q. Now, taking into consideration the virgin pressure and the present pressure of the Peerless Oil and Gas Company Number One Crump, drilled into Section 14, and [fol. 146] shown on that map, can you compute the amount of gas that has been drained out from underneath said Section Fourteen, from the inception of production in that field, to date?

A. Yes sir, you can calculate that by a method known as the Pressure Decline Method.

Q. Will you compute for the Commission and tell them how you compute the amount of gas that has been drained out from under that Section?

A. The decline pressure for that section, for that area, is forty pounds, and with a virgin pressure of 440 pounds, that would give you approximately ten or eleven per cent. If it were 400 pounds now, and had declined 40 pounds, you have had a ten per cent decline in rock pressure. By using ten per cent decline, you could say ten per cent of your volume under that formation has been withdrawn. Using the figure which I just gave you, eight billion, two hundred fifty million, ten per cent of that would be eight hundred twenty five million cubic feet of gas which has been withdrawn or produced from that Section as of this date.

Q. And none of it has been produced from the Peerless well?

A. None has been taken from the Peerless well.

Q. It has all been produced by other wells drilled into the common source of supply drilled in the Hugoton field? [fol. 147] A. That is the only way it could have been withdrawn.

Q. Taking into consideration all of the information you have and which you have testified about, shown on the map, tell the Commission in your judgment whether or not the Republic Natural Gas Company wells shown on that map have participated in that drainage and what portion of that drainage they have secured the benefit of.

A. I cannot calculate the exact portion. I would say, the major portion of the gas which has been withdrawn from that Section has been produced by these nearby Republic wells.

Q. I notice here in the Commission's Order they find that the Republic is getting six cents per thousand cubic feet for their gas. Take that figure and compute the amount

that has been withdrawn and drained from under Section Fourteen.

A. You say, at six cents?

Q. Yes.

A. That would amount to $41,500. (Later corrected).

Q. Do you know what it costs to drill a gas well out there?

A. Approximately Thirty Thousand Dollars.

Q. It appears from the testimony that the Republic contends that one cent out of that five cents is paid to them for the gathering and transportation of that gas——

[fol. 148] Mr. Foulston: I object to that. That is not before the Commission.

Chairman Bond: Objection sustained. Exceptions allowed.

By Mr. Pruet:

Q. How much gas did you estimate had been drawn from underneath Section 14?

A. By the pressure decline method I figured ten per cent, of the pressure had been dissipated, and ten per cent of the ultimate recovery figure which I calculated as being eight billion, two hundred fifty million—ten per cent of that would be eight hundred twenty five million.

Commissioner Armstrong: That is how much has been withdrawn since the well has been completed?

By the Witness:

A. No, since the beginning of the field when they had virgin pressure, down to this date. There has been a decline of forty pounds. That is virtually ten per cent of your initial pressure for the area.

Commissioner Armstrong: These three hundred wells up in Kansas have been draining that area?

By the Witness:

A. That affected the drainage some, even before the Republic Natural Gas Company drilled their first well, but in like manner, this area is being benefitted and has migratory gas coming into it from the east—and that has more or less compensated.

[fol. 149] By Mr. Pruet:

Q. Beginning with the dates of the various Republic wells drilled in and placed on production, you stated awhile ago that the average reduction in pressure from those wells was how many pounds, from the time of their initial pressure to the present time?

A. I think we talked just about one well.

Q. Haven't you comuted what the average reduction of pressure on the Republic wells has been, taking into consideration their initial pressure and their present pressure?

A. Yes, sir, that difference is forty pounds.

Q. So, the Republic wells, from the time they were drilled, down to the present time, have shown a pressure decline on an average of forty pounds each?

A. Yes.

Q. Tell the Commission whether or not, during that period of time, and as a result of the operation of the Republic wells, there has been a comparable reduction under Section Fourteen?

A. There has. There would be a drainage under this one Section of seven hundred fifty million cubic feet of gas.

Q. That is since the first Republic well was drilled in?

A. Yes, sir.

[fol. 150] Q. And the majority of that drainage that has taken place under this one Section 14 has gone to these Republic wells?

A. The majority of it, I would say, has gone to these Republic wells.

Q. I believe in computing the value of that gas, you must have made an error—825 multiplied by 6— that would have been $49,000.00.

A. You are right. I would like to correct that figure to be $49,000.00 instead of $41,500.00.

Q. In other words, the Republic Natural Gas Company has been doing very nicely with gas belonging to the Peerless Oil and Gas Company.

Mr. Foulston: I object to that as asking for a conclusion of the witness, and it is an improper question.

Chairman Bond: Sustained, Exception allowed.

By Mr. Pruet:

Q. Assuming that there are more wells drilled into the field near the wells that are now operating, that the Peerless well is unconnected and is not producing, will that drainage continue in the future as it has in the past?

A. Absolutely. The only way you could stop drainage, they would have to shut all the wells in and not withdraw any gas. As I have shown by my calculations, there remains approximately seven billion five hundred million cubic feet under that section. If you never make any con-
[fol. 151] nection and never produced any gas there through the Peerless well, eventually that rock pressure will be reduced to approximately forty pound pressure—abandonment pressure, and all that gas will have gone out to other wells, and both the pressure and the volume have been dissipated.

Q. And the Peerless will receive no benefit from the gas lying under that section?

A. No, and probably will be sued by the royalty owners for not getting their share of the gas.

Q. The Conservation Department just handed me some well logs which I think reflect the Republic wells shown on your map. I would like for you, if you will, to examine those logs for the purpose of determining, if you can, whether or not those Republic wells were drilled into and are producing from the same common source of supply into which the Crump Number One of the Peerless Oil and Gas Company in Section Fourteen has been drilled?

Mr. Foulston: I object to that as calling for a conclusion of the witness. And it is incompetent, and if not incompetent, it is asking for a matter which is of record with the Commission and which speaks for itself.

Mr. Pruet: Does counsel admit that all of these wells are drilled into and are producing from the same common source of supply?

[fol. 152] Mr. Foulston: No, we do not admit it.

Chairman Bond: The question of incompetency is the most serious question. Those records have not been proven by a custodian.

Mr. Foulston: I am not raising that objection.

Chairman Bond: Then the objection is overruled. Exception allowed.

By the Witness:

A. In the first place, I don't think it is necessary to look at the log to prove that they are producing from the same common source of supply of gas. You would never have had the decline in pressure in the Peerless well if they had not been producing gas from a common source of supply. If the Republic wells had not been producing gas from the same source of supply, the Peerless Oil and Gas Company's Crump Number One Well would still have its virgin pressure of 440 pounds, and to substantiate that fact, you can examine these logs. They have penetrated the same stratagraphic section that is producing from the Peerless well. It is a common practice in the Hugoton field to drill all of this stratagraphic section which are—whose producing formations are members of the lower Sumner and Chase Group, and which are of Permian age. These two groups have an average thickness of two hundred fifty or three hundred feet. These wells have virtually penetrated that zone, which gave them the benefit of all pay zones in that particular area.

Mr. Pruet: That is all.

[fol. 153] Cross-examination.

By Mr. Foulston:

If your Honor please, I would like to cross-examine the witness and then there is some features, during the time I was out, that Mr. Seifkin can bring out, will that be satisfactory?

Chairman Bond: Very well.

Q. I think you have stated you were a petroleum engineer.

A. Yes, sir.

Q. You feel yourself competent to express opinions which you have expressed here.

A. Yes, sir.

Q. Have you had any personal, actual experience in the Hugoton gas field?

A. Yes, sir, in a few cases.

Q. What?

A. Yes, sir.

Q. Where?

A. For example, I was with the Wilcox Oil Company about the time they drilled the Hovel well southwest of the

town of Guymon. That is in the center of what is now known as the Hugoton field.

Q. What was your connection?

A. Geologist.

Q. As a geologist when the Wilcox Oil Company drilled one well south of Guymon?

A. That's right. That is before we knew it was a Hugoton gas field.

[fol. 154] Q. Have you had any other actual experience in the Hugoton gas field?

A. I have had occasion to see samples of several of the Cities Service wells which have been drilled and completed for nice gas wells.

Q. When *was* the wells completed?

A. Wilcox Oil Company's?

Q. Yes, sir.

A. About 1929, I believe.

Q. How many times have you been actually in the Hugoton Gas field since 1929.

A. I have in mind what is the Hugoton gas field, what I think it is, I have been about fifty times. My wife's folks live in that area. I am out there quite frequently.

Q. You were doing geological work in there?

A. Yes, sir,—my wife's people, own land in there, naturally I was interested.

Q. What geological work, what samples have you had occasion to pass on since 1929?

A. I have expressed an opinion on samples in fifteen or twenty wells in the Oklahoma area.

Q. In the Oklahoma area part of the Hugoton field,

A. Yes, sir.

Q. When you refer to the Hugoton gas field, what area do you have in mind?

A. Well, as far as the nomenclature committee is concerned, I think they include an area 150 miles long, about [fol. 155] 35 or 40 miles wide, that extends from Texas to Kansas.

Q. Possibly into Texas.

A. Yes, sir.

Q. Certain parts clear across, north and west of the County of Texas, in the State of Oklahoma.

A. Yes, sir.

Q. A large portion of Stephens County.

A. Correct.

Q. Some of Kearney County, Kansas.

A. Right.

Q. Some of Finney County, Kansas, Morton and Haskell County, Kansas.

A. Right.

Q. Is it your studied judgment as a geologist and petroleum engineer, that of the vast territory, 150 miles in length, fifty in width, constitutes what is known as the common source of supply of the Hugoton Gas pool?

A. It is.

Q. You have selected certain sections for Exhibit 9, which you have identified and offered in evidence.

A. Yes, sir.

[fol. 156] Q. Who gave you the information which you used in connection with the preparation of the exhibit?

A. I obtained, as stated previously, all the records of the Oklahoma Corporation Commission and the records of the Kansas Corporation Commission.

Q. How far east of the lands which you have shown on your exhibit, in your opinion, does the Hugoton gas field extend.

A. Oh, I would say approximately ten or fifteen miles.

Q. How far west, in your judgment, from the extreme limit of the lands shown on Exhibit 9?

A. Probably ten or fifteen miles.

Q. How far north of the lands shown in the Exhibit 9, in your opinion.

A. Approximately a hundred miles.

Q. So you can go how far south of it.

A. Oh, Approximately 50 to 75 miles. That is undertermined of this date, but they can go a long ways.

Q. It would come under from any portion of the land shown on Exhibit 9, one hundred miles to the North, Ten or fifteen miles to the west, ten or fifteen miles to the east and fifty miles to the south and still be in the same common source of supply that you have indicated as being covered by the property shown by your exhibit, is that right?

A. That is correct.

Q. I notice you have not shown the terminus of any pipe lines on Exhibit 9, marked in heavy black lines, "Republic Natural Gas Company," do you know from your knowledge or from your study or information, whether any of those lines extend outside of the territory which you have described as comprising the Hugoton gas area?

A. So far as I know, all the lines that I know of, that [fol.157] belong to the Republic, exist in the Hugoton gas field.

Q. Are still in the physical territory that you have described as the common source of supply.

A. I don't have all the places you have leased.

Q. You know that none of the lines shown on the map, do not extend beyond the limits?

A. No, the map isn't large enough to show that.

Q. Then, the selection of these few sections are of your choice.

A. I had to take these sections because these are the section- in the vicinity of the Peerless Oil Company's well.

Q. So you spotted a few wells of the Republic around section 14, and plotted the map or the location that you have shown.

A. That is the only way I could get the factors that were relative to this particular tract.

Q. Have you taken in enough territory to show the wells that may or may not drain the Peerless well?

A. I will say this, I think I have taken in enough territory to show the wells which will get them a -jority of gas from this section.

Q. As a petroleum engineer, if all of the wells shown on your map, exhibit 9, were shut in, and no gas was produced from them, would you be willing to say there was no drainage of the Peerless lease?

A. No, if these wells were shut in and all the wells surrounding this area were allowed to continue to produce there would be drainage too,—your wells would be drained too.

[fol. 158] Q. Isn't it true, if there was only one well in the whole Hugoton pool, under your theory of the matter, and which well continued to produce, it would drain the Peerless lease and drain all these Republic leases?

A. Theoretically, that is right.

Q. Therefore, any drop in the rock pressure that you may have discovered or shown here, is rather universal throughout the entire field, isn't it?

A. I am not testifying as to the entire field. All I am testifying about is these wells right here. (Indicating.)

Q. Do you know of any wells that has been drilled in the Hugoton field in the last ten years that has shown a rock

pressure of 440 pounds any place in this 150 by 50 mile territory?

A. The record reveals a number of them.

Q. What *is* the wells?

A. I will have to look them up.

Q. You say there are. Do you know what part of the field they are?

A. Just a minute, I will give you the exact location. You wanted above 440 pounds.

Q. Above 440 pounds in the last ten years.

A. There is any number in here—440 pounds—would you like to have one of two or those? Here is the Benedum & Trees Oil Company, No. 1, Brecheison.

Q. When was it drilled?

A. Section 3, Township 35 south, Range 38 West.

[fol. 159] Q. When was it drilled?

A. July 1st, 1930.

Q. 1930?

A. Yes, sir.

Q. That isn't within ten years, is it?

A. No, sir.

Q. Do you find any that exceed 440 pounds?

A. Do you want to know the pressure of that well in 1930?

Q. I am not familiar with the well,—there hasn't been—let us pass into something else—there hasn't been any substantial production in that field until the last four or five years.

A. That's right. As far as the Oklahoma area is concerned, most production has been since 1938.

Q. Say about seven years, six or seven years,—would take all of the time in which there was any substantial production of gas from the Oklahoma part of the pool.

A. That is correct, except for an isolated area around the town of Guymon.

Q. I want to ask you about the ownership you have shown on this map. Where did you get that information?

A. As I stated, I took it from the corporation commission's records. They show.

Q. I don't mean the owners.

A. I don't have an attorney's opinion on these leases, I didn't check the records on that.

Q. Do you know whether or not, all of the lands shown on your exhibit, whether they have producing wells and

[fol. 160] connected wells or are lands, with exception of your section 14, in which—possibly it has one of these strips—are lands, at the time of the preparation of this exhibit, in which the Republic Natural Gas Company either has wells or has leases or owns the minerals and has the right to take those minerals from that ground?

A. All I know is, the records reveal you own or you operate each one of these wells as shown on this map. You may not own each one hundred per cent.

Q. Take section 13 and 14, in township 38 south, range 38 west, is that land underlaid with the same kind of gas you described that underlies section 14?

A. Absolutely.

Q. You think the rights of the people that own that gas is as sacred as anybody elses rights?

A. Yes, sir, if they don't take it and produce it they will be affected just like the Peerless Company.

Q. Take section 17, do you know who owns the right to produce the minerals from that, 37-35——

A. As far as I know, the information I have, it is owned by the Republic Natural Gas Company.

Q. There is no producing well on that?

A. That's right.

Q. You think the Republic's right to produce that gas and sell it to markets it may have, is just as sacred as the rights of the Peerless to sell their gas?

A. I don't know about the 'sacred' business. Only thing [fol. 161] I have testified, they are going to be drained and you are going to lose a lot of gas if you don't drill on that section.

Q. And naturally they will be drained in the same proportion or greater proportion, as the Peerless in section 14.

A. It certainly will be drained, if you don't drill it.

Q. Are you familiar with the well owned by the Republic Natural Gas Company, in the east half of Section 19, township 6 north, range 16 east, being the corner stone on your map, are you familiar with the fact that there is a well that has been drilled and completed and unconnected there?

A. No sir.

Q. You are not?

A. No, sir, I couldn't find any report where you listed that well with either Commission.

Q. That is closer to the other wells of the Republic than the section 14, isn't it?

A. No, sir, it is the same distance.

Q. You think that section, at that distance is similar to section 14?

A. I do, in this particular instance.

Q. Let's say 'in the same relationship' as this section 14.

A. It is similar.

Q. You don't know that there is an unconnected well that is owned by the Republic.

A. It has never been reported, I don't believe, to the Corporation Commission as being completed or showing of any production figures.

[fol. 162] Q. Take the territory lying immediately south of Section 15, do you know who possesses the right to drill in it and sell that natural gas?

A. No sir.

Q. You have shown the Cities Service owns that. Your map can be in error on that.

A. The Republic owns part of that section.

Q. Do you have information that the Republic owns all of that section?

A. Section 23?

Q. Yes, sir.

A. I show the Republic owns one southeast quarter and the Cities Service owns the remaining three quarter sections.

Q. Do you know whether your map is incorrect as to that?

A. As I stated awhile ago. I have no attorney's opinion as to title. I haven't checked the records personally.

Q. *Ehre* is no representation on your part that either the minerals or leasehold estates are owned or correctly represented on Exhibit 9.

A. Only ones I represented are correctly shown, are the ones in color, other than that I do not represent to know that the ownership is correct.

Q. You have gotten that in formation from *recores* from the corporation commission and so forth.

A. That's right.

Q. You have made no examination of any of the wells, [fol. 163] know nothing about them, never been to any of these wells.

A. I think I been across there.

Q. Which one.

A. I have been to the Crump Well, Peerless Crump.

Q. Have you been at any of the other wells?

A. I have done a lot of duck hunting through that country. I expect I have.

Q. You weren't called on in your duck hunting to do any geological work?

A. Not on that particular day.

Q. Now, in your judgment, is there any difference in the various sources of production, sources of gas in this field, from any other part of the field, or is it all one common flat place in which you can drill in any place and get the same production.

A. That is a pretty broad statement. From area to area there is bound to be some variation, as to thickness of pay, as to thickness of effective pay and effective *porosity*.

Q. Do you know whether or not it is accepted by students of geology that the production lies in various lenses?

A. I would qualify that statement. I would say there are one or two formations up there that are lenticular and do produce a little gas. My conception of it is, there is two principal formations which yields the largest quantity of gas that is produced from the two principal gas formations that are not in lenses, but is a common source of supply.

Q. I will ask you if these two main sources of production [fol. 164] you are talking about are encountered in all the wells which you contend is one common source of supply?

A. Well, I wouldn't say all the wells, because there might be an exception. Some fellow might have lost a hole or something.

Q. Don't you know that it is an accepted fact that there are lenses in which the gas is produced in some of them, you will find one or two the same and sometimes you will find as high as four or five of these lenses interspersed in this production area?

A. I told you what I know. In fact I can give you the names of the formations which are lenticular and which do not yield very much gas, but these are erratic.

Q. All the formations that are lenticular are the ones that do not yield much gas.

A. That is correct.

Q. If they are lenticular they do not yield much gas.

A. That is correct.

Q. Do you know whether or not the specific gravity of the gas and the rock pressure in those various lenticular formations are different or whether they are common through the field?

A. There might be a slight variation. If you are talking about the entire Hugoton gas area there is a difference. If you are talking about this localized spot, there is little or no difference.

Q. This is one spot in a common source of supply, according to the testimony.

[fol. 165] A. That is right, I am not testifying about the whole field, because I do not think that is the question.

Q. How far does the gas drain, in your judgment, with reference from a higher pressure to a lower pressure?

A. I think it goes in the direction of the least pressure.

Q. How does it drain as it effects well bore, in a circle or according to the government survey?

A. I wouldn't know a thing about the government survey. It may be irregular or regular. That is something you don't know.

Q. You can build up pressures. If you could get pressures at intervals of each foot out horizontally from the well you could probably follow the direction from which each thousand cubic feet of gas is produced but it is very difficult for all the underground conditions are not known and you don't know whether it comes in one direction or three or four directions?

—. It depends on the character of the formation, thickness of porosity, a lot of factors are involved.

Q. Do you know what the porosity of these various wells are?

A. I can give you an approximation.

Q. An average?

A. Yes, sir.

Q. Average wouldn't do any good if we are trying to distinguish that element to determine the rate of flow.

Mr. Pruet: We object as argumentative.

Mr. Foulston:

Q. Would the average do any good?

A. That is what I have used, the average. I am satisfied it does do good.

[fol. 166] Q. You are satisfied it does.

A. That the average is the fair way to calculate the ultimate recovery of the gas.

Q. Although you tell us you used the average, you can't tell because you don't know these particular elements that

you have mentioned as affecting whether the gas drains in a circle around the well bore or whether it drains otherwise. I'm not trying to be facietious, what I am trying to find out,—do you contend this gas around these wells which are producing, drains in a circle and the reduction of the pressure is in a circle around the well or does it follow some other course.

A. It drains from the direction of the highest pressure. It may circle, it may be northeast, southeast or wherever you have the greatest pressure to drive that gas in the well bore.

Q. As a matter of fact, in order to determine whether or not, whether there was, on the date of the completion of the Peerless well, whether there, underlying section 14, is much or more or less gas than any of the other wells,—it wouldn't be fair to compare pressures which were taken from a producing well as compared with one that was just drilled in and shut in for four months.

A. All of these pressures were shut-in pressures, taken under similar conditions.

Q. You mean a 72 hour shut-in pressure test.

A. Some cases you do, sometimes you don't. I think that it is a common practice to use a 72 hour shut-in pressure.

[fol. 167] Q. You have given the section 14 well, Peerless Well, a pressure of 396 pounds, is that right?

A. Yes, sir.

Q. You have given the—one of the wells you had, for instance to the west, a pressure of 386.6 or seven pounds difference, do you know whether those pressures were taken under comparable conditions or not?

A. I think they were approximately similar, yes, sir.

Q. Do you know that to be true or are you just guessing at it?

A. Only factor that is not similar, as far as I am concerned—is that your well has been taking gas constantly by withdrawing this gas or producing half a million or a million a day. You naturally reduce your pressure as you produce the gas. The Peerless has produced no gas since the completion, other than making pressure tests.

Q. How far does the reduction in pressure extend from the well bore, how far do you think it would extend.

A. I can scale it off on the Isobar map if you wish.

Q. I am asking you, in your judgment, how far you think it would extend—how far does the reduction in pressure,

from the production of any one of these Republic Wells, extend from the well bore.

A. Well, specifically you want to take your well just west of the Peerless well.

Q. Take the worst illustration you got there.

A. The Blackmer is right by the Peerless well. You [fol. 168] want to see the Isobar map? It shows the pressure has increased less than a quarter of a mile to the south and east; going in a northeasterly direction the pressure has considerably decreased going half a mile to the northeast, from the Isobar map, it places the pressure that they took in the same year, 1944, would show a decline in pressure of five pounds.

Q. In where?

A. In half a mile northeast. I beg your pardon—half a mile northwest, in the Blackmer well.

Q. Now, assuming that there is some drainage—I'm not arguing there isn't, every time a foot of gas is taken out of the field in every common source of supply—could that drainage come any more from section 14 than it does from any of the rest of these properties?

A. No, sir,—the only way you can look at it in a particular spot like this I would say any 640 acres in here is being damaged to a similar extent.

Q. If it was only possible to take the gas from one 640 or another it would be a question—not being an expert engineer—to have something else to determine which one of the 640's should immediately produce, wouldn't it?

A. All of them will produce if they will drill them.

Q. I mean which one should be produced.

A. To protest the land owner I think they all ought to be produced, if you are going to protect the royalty owners.

Q. Do you know how many proven locations there are in that field?

[fol. 169] A. I certainly do not. There is a lot of them.

Q. For the purpose of telling you, for basing the question, there are five thousand square miles which are proven in that gas area, if what you have suggested should be done, there would be five thousand gas wells drilled into the Hugoton field, assuming that be true, do you know how much each royalty owner would receive for the gas, if the present market was divided among the five thousand.

A. Yes, sir, if they were completed, each land owner would get if a farmer owned a section of land, he would

receive for his royalty interest one hundred dollars per acre or sixty-four thousand dollars, per section, based on five cents per thousand for gas, on the basis of five thousand wells and figuring eight to nine billion cubic feet of ultimate recoverable gas.

Q. You mean the life of the field.

A. Over all the life.

Q. What do you think is the life of the field.

A. That depends on how fast you take it out.

Q. And how many wells you drilled—you might let it be stated the Kansas Commission found out that the life of that field was eighty years, and some of the witnesses testified eighty to two hundred years. What is your judgment?

A. It depends on how fast you drill it, how closely the wells are spaced. If you drill a well on every section for the next two or three years and you produce at the rate you are producing now, it will not live eighty years.

[fol. 170] Q. Is there any market that you know of that will take the gas from five thousand wells?

A. Do you want my opinion?

Q. Would you agree you can't get the market for five thousand wells, any given wells?

A. No, I don't agree to that.

Q. You don't agree to that?

A. I don't agree to that.

Q. You think it could be done?

A. I think anything is possible.

Q. You think there are some things that are possible.

A. Yes, sir, I don't think it is very ridiculous, due to the demand of gas as I know it.

Q. I am very much interested in your suggestion you think those five thousand proven locations can be immediately drilled.

A. When I say "immediate", I intend to say over a period of three or four or five years.

Mr. Pruet: We object to counsel continually making a speech.

Chairman Bond: Objection sustained.

Mr. Foulston:

Q. Therefore, barring any of these matters you have mentioned, you will agree that the gas would ten- to go around the well bore and in a circle.

A. I didn't say a circle. It would circle probably a few foot out from the well bore. If you take the entire section I think this would not be the case. The pressure map of [fol. 171] this area shows where you have low pressure but is an elongated area running in a southwest-northeast direction and is located to the northwest of section 14 about two miles.

Q. When pressure compensates itself from any drainage that might have been created by the taking of any gas from one or more gas wells, in your judgment or theory, will the pressure throughout the field equalize within a reasonable time?

A. Well, in this particular instance here, if all wells were shut in and there was no gas withdrawals over a long period of time, that pressure would approximately equalize, but due to the fact each well has as much drainage area, from one to ten sections, it would take a long time for the pressure to equalize.

Q. What wells, in order to prevent any drainage, would have to be shut in?

A. Republic would have to be shut in.

Q. The Republic would have to be shut in, any section, or that wouldn't occur?

A. If you shut in all of your wells and keep one well, wouldn't make any difference which one produced that, that production will cause—you would affect the rock pressure in section 14 and consequently you have drained that gas.

Q. How long a period of time?

A. Of course that is something I can calculate.

Q. Can you express any opinion to the Commission how much drainage may have occurred or likely to occur from present production, from flow of gas from Kansas into Oklahoma or Texas into Oklahoma or other lands adjacent? [fol. 172] A. Well all I can say is to tell you what has happened there in six, seven or eight years. Wells cannot be producing in all of of that period of time and complete information available. Your principle section there is Section 18, completed in 1932. The first large quanity of gas was produced in 1938 in the Hamilton well located in 35 South, 38 west and continued producing a large quantity of gas until the present.

Q. Well, are the two wells illustrated, the Mitchell in Section 18-35-37 wasn't it drilled in 1930?

A. Yes, sir.

Q. And pressure at 430 pounds and ten years and six months later the well in that section was drilled and had a pressure of 416 pounds, didn't it?

A. Yes, sir.

Q. In ten years the pressure in an adjoining section dropped about thirteen and a half pounds.

A. That is right and there has been a very small withdrawal in the Mitchel- well in the first seven years.

Q. The same thing occurred throughout the field according to the map.

A. Time factor enters into it.

[fol. 173] Mr. Seifgan examines the Witness:

Q. Any production will recuce the pressure will it not?

A. Absolutely, any appreciable production.

Q. Production of six or seven million feet a day will materially affect the pressure?

A. Yes, sir.

Q. So when the Peerless well, after being drilled was allowed to flow open six or eight days at six and a half million feet a day and while acidizing at thirty-one million a day, that vary suitably affected the well?

A. I doubt it because the Republic wells were not shut in and if you were producing from your wells and they were not shut in there might have been a slight pressure decline because three or four days is not enough time to reduce the pressure, permanently.

Q. Would twelve or fourteen days make any difference?

A. I don't think so on 640 acres as a drainage area.

Q. You heard Mr. Welbourn's testimony?

A. Yes, sir.

Q. Did you figure up the amount of gas on that?

A. No, sir.

Q. Take ten days at six and one-half million and three days of thirty-one million and you get a total of six hundred fifty-seven million do you not, isn't that about right?

A. I think that is about right.

[fol. 174] Q. Now tell the Commission the most gas produced by the Republic in any well of that area from the time from June to September—you have those figures, don't you?

A. I have included May, it's May, June, July and August, the Mitchell well, Northeast, 108,576,000 cubic feet. The Hamilton 67,145,000 cubic feet, the Jackson well 65,911,000

cubic feet, the Bla-kmer 81,840,000 cubic feet, the Cope well produced 95,672,000 cubic feet and the Daulabalm 99,387,000 cubic feet.

Q. Those figures demonstrate that the Peerless got more than the Republic production from that well there?

A. I will answer that the figures I gave you was the amount of gas you sold and reported to the Commission and that when you completed your wells you in acidizing and testing blew into the air a similar amount of gas.

Q. I am not talking about that, isn't it a fact that the Peerless took more gas out of that well than the Republic?

A. I don't know, you are telling me how much I don't know how much the Peerless produced, I will show you no production figure on Number One Crump by the Corporation Commission reports.

Q. Taking the figures by Mr. Wilbourn, more gas was taken out of section fourteen than was produced in the Republic lease than you have referred to, isn't that correct?

A. You have shown your own computation in that and I think that it is right, if the volume is correct.

[fol. 175] Q. Then that there has been no drainage since the Peerless well was completed, no counter drainage?

A. Four months was not much time, but four years time would be sufficient to make an accurate completion.

Q. I ask you if there has been drainage in there part of the time?

A. I think that around the area the edges may have been drained.

Q. Has there been any drainage that was shown by compositated by counter drainage?

A. Yes, sir.

Q. How long has the Peerless owned the lease?

A. I don't know.

Q. They don't owne it as far back as the virgin pressure?

A. I don't know how long they have owned it.

Q. Your figures are based on the virgin pressure?

A. Yes, sir.

Q. Do you know what acid was put in the well?

A. I think I can tell you the quantity of acid, do you want that?

Q. Yes, the quantity of acid.

Earl Pruet: I want to move that the cross-examination of this witness as to the amount of gas being taken out,

stricken from the record as it is not in evidence. Mr. Wel- [fol. 176] bourm did not testify as to how much gas went out of the well.

Chairman Bond: If the counsel for Republic has based his hypethetical question on the wrong hypothesis the Commission will strike the question.

Q. Do you know how much acid was used?

A. From five to fifty thousand gallons.

Q. Do you know how much, where they used as much as ten thousand gallons?

A. I have not found that out, I can check it and find out, I will be glad to do that.

Q. I notice that you have outlined the units in squares, you saw the unitization in the records of the Commission?

I. I didn't read them.

Q. You didn't pay any attention to them?

A. No, sir.

Q. That is all.

Earl Pruet conducts redirect examination of the witness:

Q. Counsel has questioned you in regard to the lenticular pay theory, I will ask you whether or not the fact is that the Peerless well shows a pressure of 399 pounds instead of the virgin 440 pounds and shows local interconnection of the pay zones has been reduced by production?

A. There is definitely interconnection and they are in the same source of supply, if that were not ture it would still [fol. 177] have 440 pounds. The pressure could not be reduced forty pounds unless the gas was taken out from under that land.

Q. The counsel has examined you about the section in white on the map, and as to the owner of the sections, it doesn't make any difference who owns them and who has the lease does it, it would all be the same as Peerless?

A. They will all sustain the same damage as Peerless.

Q. And the Peerless wells are the ones that are sustaining the damage, Republic I mean?

A. Yes, they are.

Q. We offer the map, together with the information thereon contained, except that part of the map which shows the value of five cents per cubic foot.

Chairman Bond: Received.

R. E. Foulston: I would like to make a little objection on the introduction of the map.

Chairman Bond: The Commission struck the price on the testimony.

Earl Pruet: And I didn't offer that as to the map.

[fol. 178] R. E. Foulston: Very well.

Earl Pruet: That is all Mr. Elliston.

Witness excused.

[fol. 179] Thereupon, E. L. Green, Jr., of lawful age, having been first duly sworn, testified as follows:

Direct examination of E. L. Green, Jr.

By Earl Pruet:

Q. State your name.

A. E. L. Green.

Q. What company are you with?

A. Cabbot Carbon Company.

Q. Does your company engage in any operation out in the Hougton field?

A. Yes sir.

Q. What are they doing out there?

A. We are producing gas and also selling gas to the City of Guymon and to the Carbon Black Company.

Q. Do you produce gas and sell it to the City of Guymon?

A. Yes sir, and to the Carbon Black Company and then for our own operation.

Q. What do you get for gas sold to the City of Guymon?

R. E. Foulston: I object as incompetent, the Commission does not have before it, the fixing of the price.

Chairman Bond: The Commission will sustain the objection in this case, but the Commission will not admit it has no authority to fix the price of gas. However, you may offer the testimony if you desire to complete your case.

[fol. 180] Earl Pruet: Note our exceptions.

Earl Pruet: Let the record show that if this witness were permitted to testify as to the prices received he would show that the price was five cents per 1000 cubic feet for gas delivered to the City of Guymon, the price at the City

Gate, and the price for Carbon purposes is four cents per 1000 cubic feet. We offer this for the record.

R. E. Foulston: We wish to object to that as incompetent, irrelevant and immaterial and not in the issues of the case.

Commissioner Armstrong: The ruling is sustained and exceptions allowed.

Earl Pruet continues with the witness:

Q. Do you deliver gas to Republic?
A. No sir.
Q. Do you purchase any gas from them?
A. No sir.
Q. You sell gas to Guymon and for carbon purposes?
A. Yes sir.
Q. You sell gas for carbon purposes and use gas for your own company?
A. Yes sir.
Q. That constitutes your production in that field?
A. Yes sir.

[fol. 181] Q. All of that is either consigned or delivered in the territory, of what constitutes the Hougton field?
A. Yes sir, the City of Guymon.
Q. You take no gas out of the field?
A. No sir.
Q. That is all.

R. E. Foulston: No cross examination.
Witness excused.

[fol. 182] Thereupon, THOMAS D. BAILEY, of lawful age, having been first duly sworn, testified as follows:

Direct examination of Thomas D. Bailey.

By Earl Pruet:

Q. You may state your name please?
A. Thomas D. Bailey.
Q. What is your empolyment at this time?
A. I am employed by the Corporation Commission as Petroleum Engineer in the Oil and Gas Conservation Department.
Q. You have been subpoened to testify in this case?
A. Yes sir.

Q. What colleges have you gone to?

A. I spent one year in South Dakota and then went to Colorado University for one and a quarter years and then spent two years at Oklahoma University. Colorado University didn't have a Petroleum Engineering School so I transfered to Oklahoma University to study Petroleum Engineering. I received a B. S. Degree in 1942 in Petroleum Engineering at Oklahoma University.

Q. That constitutes your college education?

A. Yes sir.

Q. What experience have you had since the time you graduated and completed your college engineering education?

[fol. 183] A. I worked for three months as a chief computer on a seismograph party in southern Louisana and from there I went to the Oil and Gas Commission of Arkansas and was there approximately one year. While I was with them Mr. Crowell, the Director, had me go out into the Northwestern part of Arkansas and make a survey of the gas fields in Arkansas to determine the production and how much reserve they had at that time, after spending two months on that problem I went into the office and wrote an article on all of the gas fields of northwest Arkansas and it was published in the 1942 Yearbood of Petroleum Development and Technology. From the Arkansas Oil and Gas Commission I went to work for the Standolin Oil and Gas Company and I stayed with them approximately two months. I worked for six weeks in the Tulsa office of the Standolin Oil and Gas Company and then I was employed by the Oklahoma Corporation Commission and have been here for the last fifteen months. One of the first jobs I had was to go out and help Mr. Capshaw with some tests in the Hougton Field. Mr. Capshaw is Gas Engineer of the Oil and Gas Department of the Oklahoma Corporation Commission. We tested over half of the Kansas Wells and all of the Oklahoma wells in the summer of 1943. The pressures on this map are some of the pressures Mr. Capshaw obtained on that survey and since that time I have tested several gas wells throughout the State and have been assisting Mr. Capshaw in making tests.

[fol. 184] Q. In the course of your duties with various companies and commissions you have had considerable opportunity to make a study of various gas fields and various production and the production of natural gas?

A. Yes I have.

Q. Have you had occasion and have you made considerable study of the Hougton Field in Kansas and Oklahoma?

A. Yes I have, the Hougton field has been of much interest to me, I have kept up with it since I have been with the Commission.

Q. How long have you been with the Oklahoma Corporation Commission?

A. Fifteen months.

Q. I believe you have there the map which is marked Exhibit Nine?

A. Yes sir.

Q. In your study and work with and for the Commission in connection with the Hougton Field have you had occasion to know what the virgin pressure of that field is?

A. It appears to me from pressures that have been taken in the past and from several pressures that Mr. Capshaw has taken in the past summer, that the virgin pressure in this reservoy is approximately 488 pounds per square inch, absolute in the pay zone?

Q. How much?

A. 488 pounds per square inch absolute.

[fol. 185] Q. What is the virgin pressure at the mouth of the well?

A. Approximately 440 pounds per square inch, gage.

Q. The first pressure here is what we commonly called the bottom hole pressure which was probably present in the formation before the field was discovered.

Q. And the surface well was 440 pounds?

A. Yes, gage, and I might add the original formation pressure would figure about 473.3 pounds per square inch, gage; that is the gage pressure was approximately thirty pounds higher in the formation—I mean approximately thrity-three pounds per square inch higher in the formation than at the surface.

Q. Taking the first wells that Republic completed as shown on the map and taking the initial pressures shown on the map in reference to their wells and the present 1944 pressures shown thereon, what has been the decline in pressure in the first well completed from the first pressure to the 1944 pressure?

A. It shows 430 pounds surface pressure at the time of completion and a 1944 pressure of 384 pounds giving a direct

drop of 46 pounds at the surface, or, slightly more than 46 pounds in the *reservoi* itself.

Q. I believe that the next well shown is the well in the northwest corner completed the 24th day of May 1938?

A. Yes sir.

[fol. 186] Q. What is the difference between the first pressure shown there and the present pressure?

A. It shows a drop from 423 pounds to 388 pounds or 35 pounds per square inch.

Q. Do you have information there in which you have arranged the wells in chronological order in which they were completed? If so, give the same information as to each one, going through the list.

A. No I do not have that information listed.

Q. Were you here in the Court room, and did you hear the testimony of Mr. Elliston in that regard?

A. Yes sir.

Q. This map does show the same information as to the reports of the Commission?

A. Yes it shows that the pressures in this area have been gradually decreasing in the past three years, more recently drilled wells have a slightly lower pressure than the older drilled wells.

[fol. 187] Q. Assuming the facts shown on the map and assuming as testified by Mr. Ellison that the facts shown on the map are all correct, there has been a decline of pressure on the wells of forty pounds in pressure, and that the present pressure of the Peerless wells is 399.4 pounds or close to that figure, what does that indicate to you if anything has occured from the area shown on that map with reference to drainage?

[fol. 188] By Mr. Bailey:

A. I have made calculations on Section Fourteen as to the amount of gas in place under Section Fourteen, originally, under original reservoir conditions, the amount of gas in place at the present time, and the amount of gas that will be in place at the probable time of abandonment, reservoir abandonment——

Q. How much gas in your opinion, based on your computations, underlaid Section Fourteen originally, before production was had in that source of supply?

A. I have made my calculations on bottom hole pressures and have calculated the weight of the gas column, and added

to the surface pressure to get the pressure in the formation itself, and I have used an effective thickness of eighty feet, which is the approximate thickness, shown on this Schlumberger (Slumberjay) log, of the porous section which produces gas from this well. I have made some estimates on porosity, and have estimated the porosity at sixteen per cent, and have assumed that the connate water occupies twenty-five per cent of this porosity, and the rest of the porosity is filled with the gas that is being produced from the field. I have also used a deviation factor of 0.95 and an assumed temperature at the bottom of the well, or in the reservoir itself, of one hundred degrees Fahrenheit, in calculating this original gas in place. In other words, this figure, of the gas in place is the actual amount of gas that was underneath this section at the original reservoir con-
[fol. 189] ditions, and if we brought this gas to the surface and measured it, it would be approximately eight billion, seven hundred twenty million cubic feet of gas or thirteen million six hundred thirty thousand cubic feet of gas per acre. That figure is based on a temperature of sixty degrees Fahrenheit, and a pressure base of 14.65 pounds per square inch.

Q. Taking into consideration the original amount of gas underlying that Section 14, into which the Peerless Oil and Gas Company's Number One Crump well has been drilled, the virgin pressure of the area, and taking the present pressure of the Peerless well as being 399.4 pounds, tell the Commission, if you can, how much gas has been drained from underneath said Section Fourteen.

A. All right——

Mr. Foulston: We object to that for the reason it is hypothetical and not founded on fact, and calls for a mere conclusion of the witness. It is a mere conclusion.

Chairman Bond: Objection overruled. Exception allowed.

Mr. Foulston: His question does not cover any period the Peerless had any interest out there or was presumed to have any interest.

[fol. 190] By the Witness:

A. I will take into effect the period, after I get through with some of this. I will take into account the period when the Peerless was completed in the Reservoir.

Chairman Bond: You may show the interest of the Republic Natural Gas Company, in the estimation you are making there.

Chairman Bond: Mr. Pruet; Have you in your question put in all the factors, the relation—the operation of these other wells, etc., with reference to this section?

Mr. Pruet: This, in a way, is preliminary. I am going to bring it down to the period these Republic Wells have been producing.

Chairman Bond: If you will bring that in later, the Commission will permit the witness to answer.

By the Witness:

A. Under the present conditions out there, with the present shut in pressure. 399.4 pounds per square inch, I have calculated that *that* the gas in place today is seven million, six hundred fifty million cubic feet, under Section Fourteen, which shows a drainage to date of one billion, seven million cubic feet of gas from this section. Since gas has been drained from the reservoir, I might add that at abandonment conditions of the reservoir, which I have assumed to be twenty five pounds per square inch [fol. 191] gauge at the surface, this Section will have under it seven hundred twenty four million cubic feet of gas, and the recoverability—the recoverable reserve under the original conditions from twenty years back until it gets down to twenty five pounds would be seven billion, nine hundred ninety six million cubic feet. The remaining recoverable reserve as of today figures out to be six billion, nine hundred twenty six million cubic feet. The drainage to date figured out at five cents a thousand cubic feet would be $53,500.00. I have calculated the average drop of pressure on the wells in this area during the past year and it is approximately five and one half pounds per well; therefore, I have assumed that the pressure drop in Section Fourteen has been that amount during the past year; from June 1st to October 1st, which is approximately one third of a year, the pressure drop has probably been approximately 1.8 pounds per square inch. This gives you the total percentage of the amount of gas in place, as drainage to date, from June 1st to October 1st, as .598 per cent of the gas in place, or the value of this drainage would be $2390.00. In other words, on the basis of $19.60 a day or in other figures three hundred

ninety two thousand cubic feet a day, and if this rate of drainage were to continue on this Section down to the point that all recoverable gas were drained from it, it would take 48.3 years. At that time, if the rate of drainage continues [fol. 192] constant, you would have no recoverable gas left in Section 14.

Q. Now taking into consideration your knowledge of the Hugoton field and all of the information shown on the map here, and the reduction in pressure shown on the wells, and the decrease in pressure of each of the Republic Natural Gas Company's wells, from the original test down to the present test, and the same factors with reference to the Peerless Oil and Gas Company's well which has been drilled into Section Fourteen—their Number One Crump Well,—tell the Commission whether or not in your opinion these Republic wells shown on the map have, since they have been completed and placed on production, been draining gas from under Section Fourteen, into which Section the Peerless well has been drilled and completed?

A. In my estimation, there is no question but what gas has been drained out from under Section Fourteen, and that wells in the Hugoton field have drained this gas out from under there, in the past few years. We don't know which wells have drained the Section but it is my opinion that the wells closest to it are the ones that got the major part of it.

Q. The wells close-t to it are those Republic wells shown on the map? Is that correct?

A. Yes sir.

[fol. 193] Q. Tell the Commission whether or not in your opinion that drainage has continued from the time those wells were placed on production down to the present and will continue in the future?

A. I think it has been continuing gradually ever since the field was first discovered and that it will continue in the future. In other words, if no more drilling were to take place in this field from now on, and only the wells in there now were allowed to produce, I believe you could produce all of your gas down to a certain low rock pressure, say twenty five pounds per square inch, out from under Section Fourteen through the wells surrounding Section Fourteen.

Q. If the Peerless is not connected, and these wells continue to be operated in the future, what will eventually

happen, in your opinion, to the gas reserve under said Section Fourteen?

A. The Peerless will lose it, and the other Companies will drain it out from there, and capture it.

[fol. 194] Q. And the major part of it will be captured by the Republic Natural Gas Company wells shown on the map, closest to the Peerless well?

A. They will get the major part of it because they are the closest.

Mr. Pruet: At this time, we wish to introduce in evidence the Halliburton Oil Well Cement Company's Well Log of Peerless Oil and Gas Company Crump No. 1 well.

Chairman Bond: Received.

Said Exhibit 10 is in words, letters, and figures as follows, to-wit:

(Here follows 1 Photolithograph, side folio 195)

[fols. 196-203] By Mr. Pruett:

Q. One more question. In your opinion, has this drainage continued since the time this well has been drilled and ready for production on the 28th day of April, 1944?

A. I see no reason why it hasn't continued. I believe it has.

Mr. Pruett: That is all.

Cross examination of Mr. Bailey.

By Mr. Foulston:

Q. You say that for the last fifteen months you have devoted your time principally to the study of the Hugoton gas field?

A. Not principally. I have spent considerable time in studying the Hugoton Gas field.

Q. You have assumed a porosity of sixteen?

A. That's right.

Q. One of the other witnesses assumed the average porosity of twelve and a half?

A. That's right.

Q. How did you arrive at your sixteen per cent?

A. This, in effect—this sixteen per cent I used is really less than the twelve and a half he used. I used a twenty five per cent connata water factor, which reduced the effective porosity to twelve per cent.

Q. In connection with your work you have been in rather [fol. 204] constant co-operation with the Kansas Commission and the Engineers for the Kansas Commission?

A. Yes sir.

Q. And have sought to familiarize yourself with the knowledge that the Kansas engineers, as well as your Department, have obtained about the whold field?

A. I have been more interested in Texas County than any other part of the country. I don't know so much about the Hugoton part.

Q. If you were asked to take any one of these Sections—take, for instance the Section below or the section above Section Fourteen, and make figures as to depletion in reserves—that is what you are testifying about, isn't it?

A. Drainage is what I have testified about.

Q. That is depletion in reserves underlying the land, isn't it?

EXHIBIT NO. 10

Halliburton

WELL LOG

Company PEERLESS OIL & GAS CO.
Well GRUMMP #1
Field Hugoton
County Texas State Okla
Location Sec 14-6-1

Company PEERLESS OIL & GAS CO.
Well GRUMMP #1
Field Hugoton
County Texas State Okla

All Depths Referred To Derrick floor Elevation Ft.
Log Begins At 2670 End At 2810 Ft.

HOLE DIMENSIONS

Casing Size 7" To 2670 Hole Size 9 7/8" To 2670
5 7/8 To 2823 To To

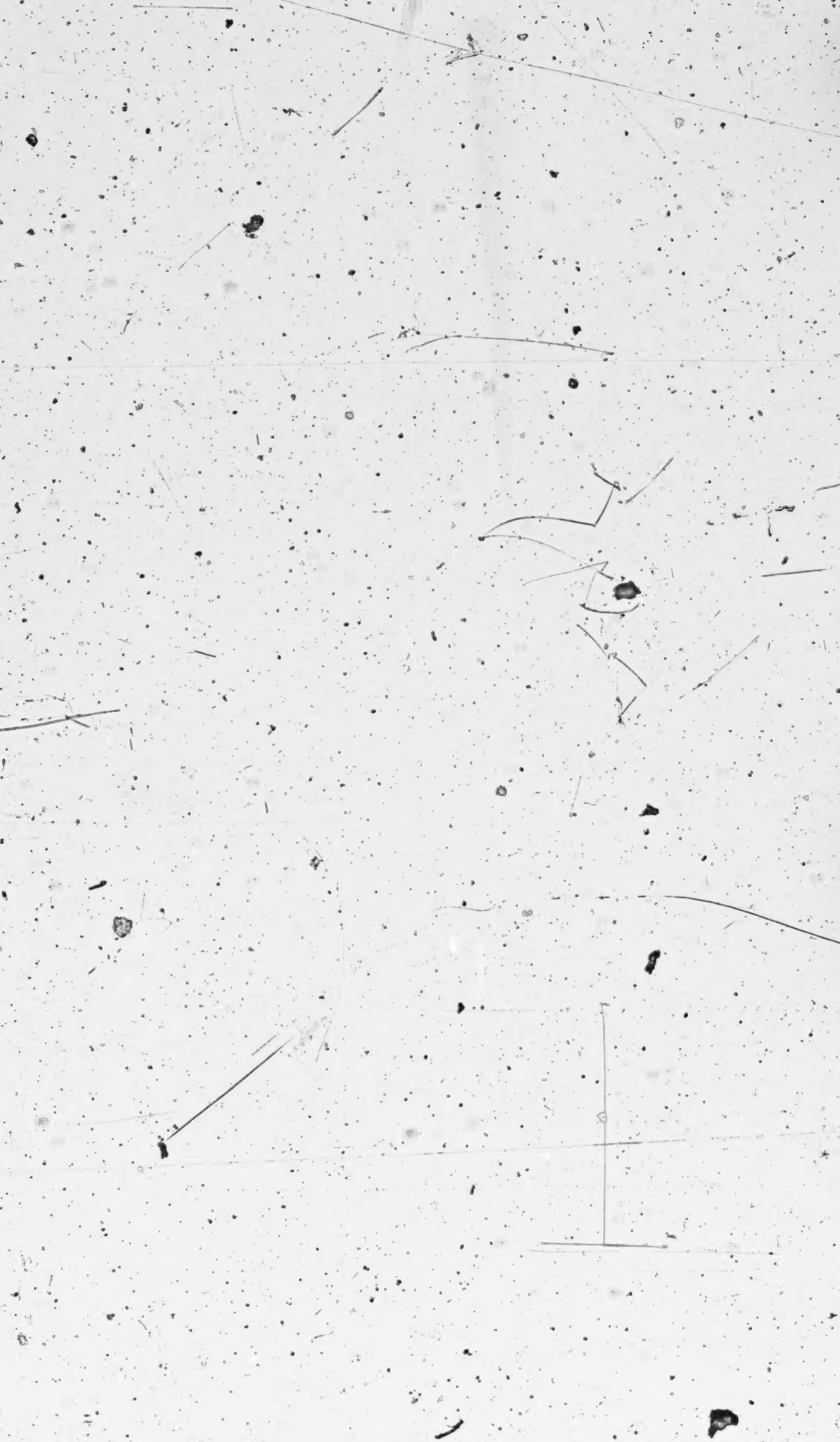
MUD CHARACTERISTICS

Mud Impedance 180 Ohms Weight Lbs per Gal.
Viscosity Seconds Type

REMARKS

Well loaded with water after acidizing

Run No. One
Date 4-29-44 B. Hamill



4-29-44
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60
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20
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gas

A. Yes.

Q. If you were asked to make the same figures with reference to any one of those white sections shown on the map, say Section 23 or Section 13, you would make exactly the same figures?

A. I didn't get your question.

Q. If you were to make figures, on the basis of this ex-
[fol. 205] hibit, as to any one of these sections—either lying below or above section Fourteen, would you make the same figures as you have made here in determining the reduction in reserves?

A. I would think that Section Thirteen might have its reserves depleted as much or more than Section Fourteen.

Q. What would you say about Section Nineteen, shown on the map?

A. Section Nineteen, according to the rock pressures listed here, I would say has not had its reserves depleted as much as Section Thirteen or Fourteen.

Q. In arriving at a conclusion, to answer the question about any of those other Sections, you would use the same formula?

A. I would use the same formula, but a different rock pressure.

Q. The only difference would be rock pressure?

A. That is the only thing that tells you what the drainage is.

Mr. Pruet: Do you regard and will you admit that this is a single common source of supply—these sixteen sections?

Mr. Foulston: I wasn't raising that. You are calling that a common source of supply.

Mr. Pruet: Do you mean that is the entire source of supply?

[fol. 206] Mr. Foulston: I mean this is a part.

By Mr. Foulston:

Q. These fifteen sections are, approximately, a part of five thousand sections in that area?

A. There may be more.

Q. And when you use a porosity of sixteen or twelve and a half, you apply the drainage to the entire field, from the Arkansas River to the Texas line?

A. Definitely, I do not.

Q. You think there is a difference in porosity?

A. Yes.

Q. What examination have you made to determine the porosity of any of these wells?

A. The porosity of these wells I think is reflected somewhat in the deliverabilities of the wells—the ability of the well to produce.

Q. Is that the way you determine porosity—as reflected by a drop in pressure? Is that your scientific method of determining porosity?

A. Porosities are determined from cuttings or cores taken from the well.

Q. Have you, on any of these wells shown on the map, determined porosity?

A. I have not the facilities for determining porosity.

[fol. 207] Q. Then the answer to my question would be, you have not?

A. I have not determined any porosities myself.

Q. I don't want to prolong this, but do you have any other means, other than assuming the drop in pressure, in estimating the porosity?

A. We had a witness on the stand awhile ago who has examined lots of cuttings——

Q. You took his testimony for the matter, did you?

A. I have used my own judgment in estimating the porosity, regardless of his testimony.

Q. He said twelve and a half. And you say sixteen.

A. Mine figures twelve as compared with his.

Q. How did you determine the porosity here is sixteen and you didn't estimate the same porosity throughout the entire area?

A. Because I have a sketch showing the deliverabilities build it up in this field. It shows the farther you go to the west, the lower the permeabilities—the formation is tighter, and in my estimation we have higher porosities in this zone of higher deliverabilities.

Q. Do you mean that you have higher porosity because you have higher deliverabiltiy?

A. That is an indication of it.

[fol. 208] Q. We were speaking of reserves underlying this land. Is there any relationship between the reserves indicated by the open flow or the deliverability where acid has been used, over the reserves in place where acid has not been used? In other words, to make my question a little clearer, one of the witnesses I think said this well had

six and a half million open flow before it was acidized, and after it was acidized it had thirty one million thirty thousand open flow.

A. That is right.

Q. Does the fact that by the use of eighteen thousand gallons of acid the open flow of this well was raised from six and a half million to over thirty one million have anything to do with the reserves in place which we are talking about protecting?

A. Not a bit.

Q. Pardon.

A. Not a bit.

Q. And therefore there is no essential relationship between open flow—natural open flow, before acidization, and that which occurs after acidization?

A. If you take into consideration the amount of acid used on a well then, and the manner in which the acid was injected into the well, then it would have some indication of the reserves.

[fol. 209] Q. Barring mechanical conditions, if we assume a good job of acidization, and assume you have a sixteen per cent porosity, is there any reason, in your opinion, why all the wells shown on this map, if the same amount of acid were used, would not show the same amount of increase in open flow?

A. I think the wells on the eastern part of this map would have a higher deliverability than the wells on the western part of this map, if each one was subjected to the same acidization.

Q. By about how much?

A. I can only estimate it. I would say that the wells on the east side might have from one and a quarter to one and a half times the open flow of the wells on the west side.

Q. There has been introduced in evidence the Order—the basic order of proration of this Commission—upon which gas is prorated between wells and based on deliverability times acreage?

A. That's right.

Q. The acreage assumed in this plat are all the same—six hundred forty acres. Is that right?

A. Approximately.

Q. And we have these open flows all the way from the [fol. 210] Peerless well of thirty one million down to fifteen million or such a matter?

A. Yes.

Q. If the Commission should be vested with the authority to order the connection with this well, and we used this acidization, the Peerless well would be entitled to twice as much as some of these other wells?

A. No, sir.

Q. It wouldn't?

A. No, sir. We do not base our allowable on open flow.

Q. You do not?

A. No.

Q. You base it on deliverability?

A. Yes, sir.

Q. What does acidization have to do with deliverability?

A. On some wells it increases it. On other wells, it doesn't have so much effect. It depends upon the conditions around—surrounding the well bore.

Q. The deliverability—the acidization—what we are doing is prorating on the basis of acidization in part and where acid is used as a basis for deliverability, you acidize the wells?

A. That is merely a matter of completion practice of the operator. He is entitled to use as much acid as he wishes.

[fol. 211] Mr. Foulston:

Q. Therefore it is a race of the Hugoton field under the deliverability formula to see who can get the most acide in his well, assuming the condition to be the same.

A. It comes to the point of acidizing a well; the more acid will decrease deliverability instead of increasing it.

Q. Is there any way now, that you, as an engineer of this Commission, could determine the natural flow of the well in section 14, as of this date?

A. Mr. Capshaw has made that calculation and he will testify to it.

Q. You don't have an opinion on it?

A. I have his figures, is all.

Q. Now, your figures are predicated upon the equivalent assumption that this is a single source of supply, you haven't given any account for the equalization of the reservoir pressure through the entire five thousand sections comprising this pool, or have you?

A. I don't understand your question.

Q. Read the question.

(Question read by the reporter.)

A. What do you mean?

Q. If there was, upon your assumption, if all the gas was taken out from all the sections shown on this map, there still would be, after a time, as much gas under this particular fifteen sections as any other fifteen sections in Hugoton pool by reason of the flow of the gas equalizing the pressure and to compensate drainage that would occur.

[fol. 212] A. I don't believe there is the same amount of gas under each section even if the pressure is the same.

Q. Leaving that out of the assumption, is that true, believing it is all one common source of supply, there is an extraction of gas from any part of this pool over a period of time, that those wells were shut in, there would be an equalization of the pressure and the reserve underlying the land, which would compensate drainage?

A. If you are asking the question if I think gas will migrate from the higher pressure areas to the lower pressure areas, my answer is, that gas will migrate to the lower pressure areas and will tend to equalize.

Q. Does that apply here?

A. Yes.

Q. If it can be a conceivable assumption that all the gas could be drawn out under all of these fifteen sections, at the end of that time there would be an equalization, there would be as much gas under those sections as there was under any other land in the pool, assuming it was not taken out from the rest of the pool.

A. There would be—if you took it down to abandonment pressure. I have figured here 25 pounds per square inch you would have left under this particular section 14, you would have 724 million cubic feet of gas.

Q. If you took the gas out from one place, it would drain in from other places in the pool, it would be equalized?

[fol. 213] A. If you take gas from one well and there is a section beside of it that isn't drilled, then the gas will migrate from the undrilled section to the drilled section.

Q. Through the entire pool—that would be true to a greater or lesser degree.

A. It is true, it is happening now.

Q. So it is impossible to tell what gas is drained out of any particular section of land that comprises a part of this so-called Hugoton Gas pool.

A. We are safe in saying when a section such as section 14 has had drainage occure to it, it is only logical to assume——

Q. Has it had any more drainage than any other section in the same position throughout the pool?

Mr. Pruet: Counsel has asked the witness a question and the witness started to answer the question, let him finish.

A. (Continuing:) that the wells located nearest to this section have drained the major portion of the gas taken out of section 14.

Mr. Foulston:

Q. What I was trying to ask you is simply this, if that is true, then what allowance have you made for the compensated drainage from other lands through the entire pool which have no wells upon it, if any, in your figures.

A. I have made allowance to this amount, that if section 14 had had as much compensated drainage as the drainage away from section 14, the pressure today under section 14 [fol. 214] would be 440 pounds the original pressure of the field. It hasn't had as much compensating drainage to it *wa* it has had away from it.

Q. Then, your figures assume that the drainage which you are seeking to prove is the difference represented by the drop in rock pressure in this particular section after the well was drilled in June or May, 1944, over what it might have been in place under that section a hundred years ago, before any well was drilled in place in the Hugoton pool.

A. The extra gas that was present under the original conditions was drained from under section 14 and the Republic wells helped in the drainage of it.

Q. Drained from where?

A. Section 14.

Q. Do you know whether there was any drainage long before any Republic wells was drilled there?

A. There probably was some drainage, because the well to the east when it was originally completed showed 423 pounds, that is the well east of 14, in section 13.

Q. That is fourteen years ago?

A. No, '38-1938. That shows to me that since the 10-24th of 1938 the pressure under section 14 has dropped from approximately 423 pounds to its present pressure, which shows that drainage has occurred under section 14.

Q. Do you know what the pressure of that well is today, section 14 well?

A. It was just taken recently,—it was 399.4 pounds.

[fol. 215] Q. When?

A. Week ago last Sunday.

Q. That was an accurate test?

A. Mr. Capshaw took that test with a dead-weight tester. He will testify as to how he took it.

Q. That is all.

Mr. Foster:

Q. Did you testify—you said it had dropped from 1938, from 440 to 399?

A. From,—approximately from 423 down to 399.

Q. That, is the Peerless well, land under 14—did you tell the Commission or have you got any way of telling if it has dropped any since the well was brought in, have you already testified to that?

A. I presented evidence here what I thought about the drainage and the amount of recoverable gas in place.

Q. Answer the question, have you already testified to that?

A. Yes.

Q. And told them how much it was?

A. Yes.

Q. That's all. I didn't want to repeat.

(The Following Interrogatories by Commissioner Armstrong.)

Q. You are just as much interested to know these other land owners are getting their part of this gas in this section 14?

A. Yes, I think every undrilled section there is at a disadvantage, and that drilled acreage will eventually drain the undrilled acreage if the undrilled acreage is not [fol. 216] allowed to drill wells on their lands and produce therefrom.

Q. Suppose the Commission ordered a connection on this

lease and the Court sustained it, then when the amount of

Q. What is going to happen to that well in that section then what happens?

A. When what? you mean the amount of drainage that has happened during the last four months?

Q. What is going to happen to tha twell in that section when they recover the amount under that land now?

A. Well, if there has been no drainage——

Q. I'm not asking about that. Is that well going to be plugged, is that connection going to be taken off and that well plugged whenever this applicant gets his portion of the gas or is he going to come in and help drain all these other people. Have you given any thought to that situation?

A. If these other fellows don't drill their acreage and get their proportionate share of the gas it will help drain the undrilled sections. It is the drilled sections that will drain the undrilled sections.

Q. You think he is entitled to all he has got under there, all he can sell besides that?

A. No, I think each fellow is entitled to what gas is under his section.

Q. What are you recommending to the Commission,—that a connection be granted and he be allowed to produce the amount of gas that you estimate was originally under that section?

[fol. 217] A. I think that his rights started when he completed that well and he will have an allowable back to the date of completion of the well, figured on an equitable basis with the others, according to its deliverability.

Q. How long should that connection last, how much gas should he be allowed to produce.

A. He should be allowed to produce ratably with other wells in the common source of supply.

Q. Regardless of how much he produced, what are you going to do when he gets the amount of gas that you estimate is under his lease, are you going to shut him off then and plug that well?

A. If he gets that much he has got what is coming to him.

Q. Then the connection should be cut off and the well should be plugged.

A. No. I think if all the fellows drill their sections and each are allowed to produce under a ratable take order, that he will not produce any more than what is under the section and when he has produced that much, the pressure

under the section will be down to the abandonment pressure.

Q. Now, if the Commission orders that well connected and that well produced, instead of eight billion feet as you estimated under there, suppose it produced a hundred billion feet, then the Commission helped rob all these other neighbors, have taken the responsibility of doing that instead of the purchasers and producers.

A. I think that is what they are allowing Republic to do [fol. 218] with their wells in there now.

Q. How much is that fellow entitled to produce?

A. I say he is entitled to produce ratably, according to Mr. Capshaw's deliverability formula.

Q. Just as long as anybody is producing?

A. These other fellows are draining these undrilled sections.

Q. You haven't given any thought to that question.

A. There is this point, Your Honor, that might come in, —these undrilled sections don't have any claim, no right to the gas until they drill their wells, therefore, if this well drains it from under him, if it isn't drilled, it doesn't hurt anything. He has a right to that.

Q. Well, let's assume there is a well drilled on all of these sections, what would be the policy, what would be your recommendation then, that each well be connected, each well produce what was figured out to be under that section from the time the well was drilled or should it be connected up and produced as long as there is a field there.

A. Every well connected up, every deliverability test taken as have been taken in the past and the market demands should be ratably distributed to each well according to our ratable take formula.

Q. You don't believe in that theory that a man is entitled to whatever is under his land originally, that the statute prescribes.

A. Well, the statute prescribes that, they have also to de- [fol. 219] terminate the amount of gas under there.

Q. You really haven't given any thought to that, have you Tom?

A. Not too much.

Mr. Pruet:

Q. I will ask you this question. If it is fair to shut down the Peerless well when it gets what was originally under the surface there of section 14, then it would also be fair

to shut down these Republic wells when they got the gas that was originally under those sections,—if it worked one way, it is fair to the other.

A. That would be fair,—still the Republic would gain an advantage by producing it that way because they would produce their gas during the period of the life of the pool, while the pressures were high and it is a known fact that gas under higher pressures is worth more than the same amount of gas under lower pressures.

Q. And Peerless would never be able to get all the gas originally under his well now that is hooked up to date.

A. It won't, unless it in itself drains other lands.

Q. If these surrounding wells continue to operate it won't drain other lands.

A. That's right, it won't drain them if they drill wells on their sections, which they have a right to do and produce their gas ratably.

Q. That being the case, if the other wells in the field continue to operate as now operated, should Peerless hook up tomorrow and all this area drilled toward it, Peerless won't [fol. 220] be able to get all the *gas* that was originally under its land.

A. I would say Peerless will not be able to catch up with the wells already produced.

Mr. Foulston:

Q. Maybe I don't understand you. Are you saying to the industry, the people that are spending their money drilling wells, that in your judgment, they either ought to shut the wells down after they produced the hypothetical reserves underlying the section or there ought to be five thousand wells drilled in that field in order to produce all the gas that underlies the entire common source of supply.

A. What I have in mind, or meant to convey was, that well that is drilled out there has a right to the gas underlying it, it also has a right to pull gas from undrilled acreage, because undrilled acreage does not have any right until they drill a well.

Q. Well, as a matter of practice—as a practical matter, you know people who own every one of these sections with an undrilled well are ready to drill a well upon it if there is a market.

A. In my opinion they ought to be sharing in the royalties in the gas that is being produced at the present time.

Q. You know it is alleged in the petition that three-fourths of the ownership of the minerals which Mr. Taylor —which Peerless Oil and Gas Company wishes now to produce are the minerals which belong to the Republic Natural Gas Company.

A. It doesn't say why Republic Natural bought them.

[fol. 221] So if there is any land owners to be consider—it ought to be somebody besides Republic.

A. I think, if you are asking about the rights under section 14, I will say, the lessee by virtue of his oil and gas lease has the rights there and he has the say-so of your interest also.

Q. That right is tantamount, in your judgment to the right of the land owners who own the minerals.

A. Yes, sir.

"Commissioner Armstrong: I understand the Kansas Commission, after a hearing, found on the market, it has been in operation about fifteen years, the land owner got a dollar an acre rental and the chances for a renewal bonus once in a while,—he has a chance to get more actual cash out of this situation than some of these fellows under some of these wells, or nearly as much.

A. There isn't a well producing out there that doesn't pay the land owner much more than a dollar an acre a year. Fact is, I calculated the average on about thirty wells, about three months back, the production from them, they were producing at the rate of seventy-seven dollars worth per day, that is four hundred thousand, figuring 16.45 pound basis, that would give the royalty owners under the section a little over nine dollars per day for about a penny and a half per acre per day, would be little more than five dollars an acre per year for the royalty owner.

[fol. 222] Q. What we need then is more market that more people can participate in, in Texas County.

A. We need that and we also need more equitable distribution of production

Q. That is all.

Mr. Pruet:

Q. You have computed, if all these possible proved locations out there in the Hugoton field in Oklahoma were

permitted to be produced in all of them are produced ratably, have you computed what the recovery in royalties would be made by eac' royalty owner per acre out there when the well had been completely produced under that sort of situation?

A. I haven't made it. I can calculate it very easily. The recovery reserve, under original conditions, would have been approximately four hundred thousand dollars under section 14, taking one-eighth of that would be fifty thousand dollars that the royalty owners under section 14 are rightfully entitled to.

Q. Approximately one hundred dollars an acre.

A. Approximately eighty.

Q. Would that be approximately correct over the entire field if all proven locations were drilled and permitted to produce ratably.

A. That's right.

Q. Each royalty owner in the field, under those conditions would receive approximately one hundred dollars an acre in royalty returns from his property.

[fol. 223] A. Through the life of the field, and if the price of the gas was increased the figure would, more than likely be closer to a hundred and fifty dollars, than it is.

Q. Final result, it doesn't make any difference whether it is taken out in a hurry or taken out slow, they get the same amount.

A. Not the same amount, but approximately the same amount.

Mr. Foulston:

Q. Now, since you have been asked that,—assuming that all of these five thousand locations had been drilled and each one had a well on it and they were all connected and the royalties were all unitized on the basis of the present title market from the Kansas and Oklahoma parts of this field, do you know what would be the average income, per acre, per year to these royalty owners?

A. It would be very small.

Q. It would be less than fifty cents per acre.

A. Probably would be. It won't be in a few years.

Q. It depends whether people can drill wells economically, under your line of reasoning.

A. We will create more markets and the outlets from this field will increase.

Q. You have figured on you're going to get markets into the field, get people to drill wells on these five thousand locations, if the total return to the owner is less than the cost of drilling his well and build his pipe line.

A. According to my figures, the amount of gas in place [fol. 224] under each section in this region is something like four hundred thousand dollars worth of gas per section, and the average life of the field is—my estimated life of the field is approximately forty years. That would be ten thousand dollars per well per year. I believe I could drill twenty economically.

Q. If your figures are right I'll get you plenty of operators to operate on that basis.

A. The market may not be right now,—it will be five or ten years from now when they begin to make gasoline out of this gas.

Mr. Foster: I want the record to show—I didn't know—I was talking to Tom—I assume he has testified of course at the request or at the subpoena of these men. Owing to the fact that he is a representative of this department, owing to the fact that half of the questions has been asked him are legal question-, I don't want this record to show we are bound by those answers. They may be right. They asked this man ten legal questions and he answered them I expect better than I could. There is one or two I don't quite agree with.

Mr. Pruet: If the Court please, I want to make this statement. We didn't bring the employees of the Commission under subpoenas to take sides in this matter or make a recommendation that a hook-up be made to our well. Our [fol. 225] purpose and our direct examination of those witnesses were only to ask questions which reflect what we think and what their opinion is as to actual facts in the field. It is up to the Commission what to do under the law.

Chairman Bond: When this case is closed the Commission will listen to the arguments of counsel. We wont listen to legal questions argued by the Witness.

Mr. Pruet: That is all.

Witness excused.

MR. ELMER CAPSHAW, a witness being called and having been sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Pruet:

Q. State your name please.

A. Elmer Capshaw.

Q. State what colleges you are a graduate of and what degrees you hold.

A. I am a graduate of Oklahoma University with a Bachelor's and Masters Degree——

Q. Go ahead.

A. I have answered your question. You want me to continue?

Q. Are you a licensed engineer?

A. Yes, sir.

[fol. 226] Q. What experience have you had as a practical petroleum and Gas Engineer.

A. I have been employed in some form of the oil and gas industry for the past,—oh, for a total of sixteen or seventeen years. For the past ten years I have been employed by the Corporation Commission since the creation of the Natural Gas Engineer for the Department and have been Natural Gas Engineer for the oil and gas conservation department.

Q. During that time Mr. Capshaw, have you had occasion to make a study of the Hugoton, Oklahoma and Kansas Gas field.

A. Yes, sir. I have spent considerable time in the field.

Q. How many different wells have you tested out there in that field for pressure and deliverability.

A. Well, I have tested all the wells in Oklahoma that are producing in the line with exceptions of a few that have been completed lately and I have probably made some kind of a test on half of the wells in Kansas.

Q. You tested various wells more than one time, per well.

A. Yes, sir.

Q. The experience you have had in the Hugoton field over this period of time, do you know or do you have an opinion as to what the virgin pressure was in the Hugoton field in Oklahoma and Kansas?

A. Yes, I have an opinion.

Q. What, in your opinion was that virgin pressure.

A. In my opinion the virgin pressure in the Hugoton field was approximately 441 pounds.

[fol. 227] Q. You are familiar with the wells shown on the map, the map marked Exhibit Nine?

A. Yes, sir.

Q. Refer to the map please, in looking at the wells there on the map, have you tested the various wells there and if so do you recall how many you tested?

A. All of these wells shown on the map in Oklahoma, I am quite sure I have tested them two times and I am not sure but I think I have tested the two Kansas wells shown here.

Q. You have examined that map there haven't you, Mr. Capshaw?

A. Yes, sir, to some extent.

Q. Does that map show the correct facts with reference to each of the wells involved as affected by the reports made to the Commission?

A. I can merely answer that I presume the data is correct, I see nothing about the data that is not correct.

Q. The data as shown, as to your knowledge as regard to the Hugoton Field is correct then?

A. I think that it is.

Q. Now you heard the testimony of Mr. Wilbourn this morning about the process they went through in drilling in the Number One Crump well in Section 14, the Peerless [fol. 228] Well in Section 14, from the process that they went through in drilling the well in and in acidizing it and the pressure of 386 pounds, in your judgment from what you know about that area and from what you heard that the well underwent, is that the natural or normal stabilization of the well?

A. I would not say it was abnormal, I would have expected a little higher pressure and if there is a possibility that it had a spring gage it is higher.

Q. With the blowing that took place and the drilling of it in what tendency would that have on the well?

A. It would have a tendency to pull the pressure down.

Q. And assuming also that he testified that the week following the 386 pound test the well was blown in four different occasions and that the test then taken along about the 26th of May which reflected pressure of 396 pounds and then blown in for the purpose of taking over flow test and

that on the 9th day of June you blew and tested the well and then again made the test that you did on the first day of this month, state whether or not you did find in the well the first day of this month that there was a normal stabilizing pressure of the well.

A. It was a normal stabilized pressure and I would not be sure that the pressure would not be perhaps a little higher point.

Q. From your knowledge of the area and the facts that [fol. 229] you know about the section 14, in your opinion if the well could have been frilled in and the pressure test taken without the blowing in, what in your opinion would the pressure have been there at the time it was blown in excess or under the 400 pounds?

A. Excess of 399.4 pounds that I got October first.

Q. Taking the information shown on the map, starting on here with the first drilled well, showing a reduction of 430 pounds.

A. Which one?

Q. That is the northeast there that shows an initial 430 pounds?

A. Yes, sir.

Q. And this well in the northwest corner of the map shows 423 pounds and in 1944 the pressure had dropped down to 388?

A. Yes, sir.

Q. The well in 16, just below there shows the original of 413- 1944 pressure of 384.9 then east in the next section of 415 pounds, 1944 pressure of 388.8?

A. Just 386.8.

Q. And just east of that the original pressure is 416 and the 1944 pressure 390, the well south west of that section 24 original pressure 428, 1944 pressure of 399 and over to the well in the southwest corner, original pressure of 420 pounds and 1944 pressure of 390 and taking into considera- [fol. 230] tion the virgin pressure of the field, the shut in pressure of Peerless as 399 pounds, state whether or not in your opinion gas is being drawn there part of the time beginning with the first Republic well, being drawn from underneath the surface of Section Fourteen?

A. I would say that gas had been drawn from under Section Fourteen.

Q. Since the first well drilled by Republic shown on that map and from that time on down to the present, have the

Republic drained gas from underneath the surface of Section Fourteen?

A. In my opinion the production of the wells belonging to Republic has caused drainage from under section Fourteen.

Q. Have they ceased the drainage at this time?

A. Principally so.

Q. In your opinion will that show on the map if it continues in the future as in the past?

A. It will if the wells in the field continue to produce as in the past.

Q. And if the Peerless well is not connected, and Republic continue there as they are now, what will happen to the gas under Section Fourteen?

A. Most of that gas will be drawn from underneath Section Fourteen.

Q. I believe you said the principal drainage was these [fol. 231] Republic wells shown on the map?

A. They are the immediate cause of the difficulty.

Q. State in your opinion whether or not the Republic wells shown on the map have shown on it the time that the Peerless well was ready for production?

A. In my opinion they have.

Cross-examination.

By R. E. Foulston:

Q. Has there been a deliverability test made in Section Fourteen?

A. No, sir.

Q. You don't know what that would be?

A. I have made a test on it.

Q. What is your judgment of that?

A. In my opinion two million, five hundred thousand.

Q. That would be higher than any other deliverability of any other in the field on the map?

A. I don't think so, no sir. The Bunger made a deliverability of 3,860,000.

Q. The other wells will be under that?

A. Well, I would have to check it, Blackmore 2,119,000 and the Judkins 2,776,000.

Q. In your opinion does the acidization effect the deliverability?

A. It certainly does.

[fol. 232] Q. Then we must think in terms of the acid that may or may not be used by the operator?

A. No, sir.

Q. You think the acidizing will increase the deliverability?

A. It greatly increases the deliverability and it would certainly have limits and in all probability would bring in additional results.

Q. You have given considerable study to the Oklahoma and Kansas production of the field?

A. Yes, sir.

Q. And you are familiar with the location and lines there; the lines that are outlined or marked as the boundaries of the field?

A. Well, yes.

Q. Would you be willing to outline on that map for your testimony tomorrow the lines or the boundaries of the Hoguton Field as you understand it?

A. I would merely answer that if you gave me a map, I would not attempt to show you except as outlined by drilled wells that are shown to be capable of producing gas.

Q. There is in your office a recorded common source of supply?

A. Yes, sir.

Q. Would you be willing to trace that in red pencil if I [fol 233] gave you the red pencil, trace it on a map?

A. I would merely trace a line of drilled wells.

Q. We are talking about a common source of supply.

A. Yes, sir.

Q. That goes to the Arkansas River to the south part of Texas County?

A. Yes, sir.

Q. And Liberal on one hand and Colorado River on the other?

A. Yes, sir.

Q. If I give you a map and ask you to trace the outline will you do so?

A. If you will give me a map showing all drilled wells, I will merely outline those wells.

Q. You mean trace out around those wells?

A. That is right.

Q. You don't admit that there is a common source of supply?

A. I think that there is a production which is beyond it, but I would not offer an opinion.

Q. I just want you to show the present lands of that area.

A. If you are trying to get how many acres there are in the field, I have not computed that. There is over two million acres.

Q. I am not trying to ask you any catch questions, will [fol. 234] you trace this if given a map?

A. If you will give me a map showing all drilled wells in that area and that shows whether they have gas in them between 2600 and 2800 feet, I will do that.

Q. And I will give you a red pencil to do that if you do not own one?

A. Al-right.

Commissioner Armstrong: How many wells are there in Texas County in the Hougton Field?

A. You understand that they are drilling wells and completing them all of the time and right now there are about 100 wells not completed.

Commissioner Armstrong:

Q. How many that don't have any connection into a pipe line?

A. I am not sure right now, sometimes I run across a well you don't know anything about. The Peerless have five unconnected wells, the Cabot Carbon have two and I ran across the log of a well down east of Guymon. I don't known just where it is or whose, it is unconnected. The Republic has a well that doesn't have a connection, that was recently when I found that. There might be a number of wells that I don't know anything about.

Q. Do you happen to know in Kansas, in working with [fol. 235] the Kansas Commission, do you know how many wells in the Hougton Field in Kansas that are not connected?

A. I have seen a published list and it's between sixteen and twenty wells.

Q. The Republic has three wells in Oklahoma not connected?

A. You have three new wells.

Q. There is about three wells in Oklahoma not connected?

A. I couldn't answer, you are drilling all of the time.

Chairman Bond: The Commission will recess until ten o'clock in the morning.

[fol. 236] Thereafter, and at the hour of 10 o'clock A.M., Cause CD 902 came on further to be heard before the Corporation Commission of the State of Oklahoma, on October 11th, 1944, all parties appearing as heretofore stated.

Chairman Bond: Gentlemen proceed.

Thereupon discussion was had off the record.

Mr. Pruet: It is agreed by and between counsel for the respective parties that we may introduce the Articles of Incorporation and other papers filed by the Republic Natural Gas Company with the Secretary of State at the time they qualified to do business in the State of Oklahoma, and that we may introduce them after we close, if we cannot get those papers here prior to that time.

Mr. Foulston: That is all right.

Chairman Bond: They will be received when offered.

Thereupon, Mr. E. L. Green was recalled to the witness stand for further Cross-Examination by Mr. Foulston.

Q. How many wells does your Company have in the Hugoton area?

A. Eight.

Q. Are they all connected?

A. No, sir.

Q. How many are unconnected?

[fol. 237] A. Two.

Q. They are located in the territory south of Guymon?

A. South and North—within four miles north of the city.

Thereupon further discussion was had outside the record.

By Mr. Earl Foster:

Q. Tell them where all of the wells are located.

A. I don't have the location of the wells. May I look at your map?

Mr. Foulston: Sure.

Thereupon further discussion was had off the record.

Comr. Armstrong: If you cannot agree, then you have the remedy that the Commission can fix the price, under the Oklahoma statute, if the parties disagree.

Mr. Pruet: Here is the only thing, I want to offer the evidence on price, and then if the Commission takes the position that if in the event an order is made ordering the hookup it will not entertain an application for fixing the price until the parties fail to agree, that will preserve our rights.

Commissioner Armstrong: I don't think the Commission would have any jurisdiction until that time comes. The [fol. 238] Commission cannot fix the price until both of you disagree.

Chairman Bond: Let the record show that the Commission does not agree on that proposition.

Commissioner Armstrong: I am stating my position.

Chairman Bond: You are entitled to your opinion. You are entitled to state your opinion, but I don't want to tie the Commission's hands.

Commissioner Armstrong: I am giving my idea of it.

Chairman Bond: You put in your idea. I want to put in the idea of the Commission.

Commissioner Armstrong: You mean, your idea.

Chairman Bond: The idea of the majority of the Commission. I will give you the Commission's idea, not mine. The Commission agrees that the statute is very clear on the facts—that there must be a disagreement but a case was filed here, heard, and dismissed. The Commission heard it, and the Commission took the position there that this case could be maintained, but the cause was dismissed and no final order has been written. Now, the Commission is not going to declare itself to the contrary because this case is going to be filed again or one like it to determine price, and there may not be a disagreement of the parties, and the question to go to the Court is whether or not the Commission [fol. 239] can fix a price, and the Commission is not going to declare itself on price until the case comes up again, and we are going to have a case in the near future from the Hugoton field as to whether or not a price can be fixed where there is no disagreement. The statute is clear on disagreement, and the power of the Commission to fix a price in the absence of a disagreement will be a question for the Court, and I don't want to tie my hands or prejudge myself.

Mr. Pruet: I don't want anybody to tie his hands or pre-

judge himself. I would like to offer evidence as to price and then the Commission can, if it desires, consider it when it thinks it is the proper time.

Chairman Bond: If you offer evidence as to price, the Commission will have to reserve its ruling and not rule on it, and just let you make your record.

Mr. Foulston: Before you go to that, I would like to say this, off the record.

Thereupon further discussion was had off the record.

Chairman Bond: Now, this is for the record. Mr. Foster, will you state your position in the case filed by the Magnolia asking the Commission to fix the price of gas?

Mr. Earl Foster: I don't know just what your Honor means. I have always been personally of the opinion that it [fol. 240] would be a wonderful thing if this Commission could fix the price, even in the absence of a disagreement of the parties. Personally I want to say I have not made up my mind absolutely whether the Commission has that power. I think it does have, and I have been working on that, as the Commission knows personally, for a long time. I hope the Commission does have that power, and I am rather inclined to believe it does, but I am not in position to state positively that it does, if that answers your question.

Chairman Bond: That answers it. I want you to understand, and those present, that is a question that will come before the Commission.

Mr. Foster: Yes, I think it will come before the Commission.

Chairman Bond: And if the Commission passes on it now, and that case comes up, it would be a precedent.

Commissioner Armstrong: I am not trying to pass on that case. The statute specifically authorizes it——

Chairman Bond: I agree with that.

Commissioner Armstrong: In a case where they do not agree. The other question has not been passed on by the court. I see what you mean.

[fol. 241] Mr. Prust: I want to have read at this time the testimony of Mr. Green given yesterday. I want the Reporter to read the whole thing. Judge Bond said he wasn't here at that particular time, and I want to get this before the Commission.

Chairman Bond: For the benefit of you gentlemen who just came in, if you gentlemen are not asking the Commission to pass on that question, we will go ahead, but the Commission won't pass on this question prematurely. The Magnolia filed a case here where there was no disagreement. The Commission tried the case, and after it was taken under advisement, it was dismissed. The Commission does not want to take some action in some other case, contrary to that, when we know we are going to have another case or other cases coming up. I don't care to hear the testimony. If we do decide that you can connect, and you gentlemen cannot agree, we can decide then.

Mr. Pruet: We will withdraw the offer of this man's evidence as to price, and if an order is made as to a connection, we can come into Court at that time with an application to fix the price.

Chairman Bond: Very well.

[fol. 242] Thereupon further discussion was had off the record.

Chairman Bond: In that case, counsel said if that was the law that people could collude and fix the price, and if it wasn't agreeable to the Commission, the Commission would have no power or jurisdiction. If that is the law, a great number of gentlemen could come into the field and get a low price and we would have no authority because there would be no disagreement. I just want to give you the idea.

Mr. Pruet: In event we make a later application, we would like to have introduced here now Exhibit No. 12 consisting of 12 ledger sheets of the Southwestern Public Service Company—photostatic copies of 12 ledger sheets; also consisting of a letter dated—photo copy of letter dated October 9, 1942, from Southwestern Public Service Company to Panhandle Eastern Pipe Line Company, consisting of two pages; also agreement of August 3rd, 1936, photo copy, entered into between Cimarron Utilities Company and Panhandle Eastern Pipe Line Company; also Supplemental Contract of April 5th, 1943, copy thereof, between Phillips Petroleum Company and Panhandle Eastern Pipe Line Company; also Processing Contract, copy thereof, dated May 25, 1943, between Panhandle Eastern Pipe Line Company and Phillips Petroleum Company; also [fol. 243] copy of letter dated April 25, 1944, from the

Phillips Petroleum Company to Panhandle Eastern Pipe Line Company; also copy of letter dated June 3, 1944, from the Phillips Petroleum Company to the Panhandle Eastern Pipe Line Company; also Modification of Gas Contract dated the 4th day of August, 1944, between Panhandle Eastern Pipe Line Company and Phillips Petroleum Company. It is understood counsel waives objection to the introduction of these exhibits?

Mr. Foulston: Yes, under the statement made by the Commission, we will not object to the identification, or lack of further identification, in case the exhibit becomes proper and in case the Commission wishes to receive it, but we reserve our objection as to the competency and relevancy of the exhibit which consists of all those instruments mentioned by counsel. I think at this place it should be stated that since we have not done so, our position is that the Commission does not have the power to fix the price of gas, and the Legislature of the State of Oklahoma has no power to confer upon the Commission the power of price fixing.

Mr. Pruet: You do not object on the ground that some of these instruments are photostatic copies?

Mr. Foulston: No, That's right.

Thereupon further discussion was had outside the record.

[fol. 244] Mr. Earl Foster: I will withdraw the question I asked Mr. Green.

By Mr. Foster:

Q. Mr. Green, how far are those two wells that are unconnected from any pipeline?

A. I would say ten miles.

Commissioner Armstrong: Mr. Green, have you tried to get a connection?

A. Yes sir, we have.

By Mr. Foster:

Q. Mr. Green, can you tell by looking at the map where the two unconnected wells are located?

A. Yes sir. One well is the Calvert Number One which is located in 14-3-16, and the other is the Castro Number One which is located in Section 19-3-17.

Q. How far is that from Guymon in what direction?

A. It is due east of Guymon, approximately ten miles.

Mr. Pruet: That is all.

Exhibit No. 12 is in words, letters and figures as follows, to-wit:

[fol. 245] Mr. Pruet: At this time we want to introduce a part of the record taken in the hearing in cause C.D-817, and we offer this, not as the testimony of the witness who testified, but as an admission against the interests of the respondent in this case, made by an officer and agent of the company as such, in that hearing.

Chairman Bond: The Commission has held that you cannot offer a record of that character where the opposing counsel has not had an opportunity to cross-examine the witness. You are offering the entire record there?

Mr. Pruet: No. I am offering just part of his testimony on one point,—as an admission against interest.

Chairman Bond: Is he present?

Mr. Foulston: Yes.

Chairman Bond: If he is present, you can offer part of his testimony so counsel will have an opportunity to cross-examine him on it, that is, if it is relevant.

Mr. Foulston: I think I will move to strike after it is in.

Chairman Bond: If you are going to move to strike perhaps counsel better read the questions and answers and let your objections go to each one of them.

[fol. 246] Mr. Pruet: I want to offer part of the record at page 3. "Appearances, Robert C. Foulston, Wichita, Kansas, for Republic Natural Gas Company."

Chairman Bond: Now you may read the questions and the answers and counsel can reserve his exceptions to each one if you desire or he can wait, but there may be something that is incompetent that the Commission might rule as competent. Read the questions and answers and then the Commission can have an opportunity to pass on the competency to protect itself. We might admit something that is irrelevant and get reversed.

Mr. Pruet: Do I understand if I introduce these statements made at the other hearing of this witness, then as an admission against the interest of respondent, then Mr. Foulston can put the witness on and examine him, now would the Court permit that to go beyond the scope of the questions and answers that I read?

Chairman Bond: The Court would limit it as to proper cross-examination but he may make the witness his witness and the Court would have no jurisdiction to put a limitation on him except as to relevancy.

Mr. Pruet: I cont object to that, of course.

Chairman Bond: The Court would place a limitation [fol. 247] unless he makes him his witness

Mr. Foulston: No objection to Mr. Rizley making the objections because he is more familiar with the procedure.

Mr. Pruet: Reading at page 97 from the testimony.

"ALFRED HURLBURT, produced as a witness, having been first duly sworn, testified as follows: Direct Examination by Mr. Foulston."

Mr. Rizley: I don't know whether you follow strictly the rules of procedure in the District Court. If you do, I want to object to each of the questions and each of the answers and reserve an exception to each of them. I didn't want to delay the Commission by making an objection specifically to each. I think the Court held unless you did, you probably waived it.

Chairman Bond: You better object to each question and answer and then there will be no error. If you have a general objection you can make a general objection. To be specific, better make it to each interrogatory.

Mr. Pruet now proceeds to read from the Record.

Q. State your name.
A. Alfred Hurlburt.
Q. And are you president and part owner of the Republic Natural Gas Company?
A. Yes.

[fol. 248] Mr. Pruet: I am now reading at page 108. Cross-examination or examination by Mr. Foster.

"Q. You do buy gas from the royalty owners?"

Mr. Rizley: Let the record show we object to the question and answer for the reason it is incompetent, irrelevant and immaterial to any issue involved in this case, not an admission against interests, not the proper way to prove admission against interests.

Commissioner Armstrong: Overruled, Exception allowed.

"A. We take their gas."

Q. And you do transport that gas to a point in Kansas.

Mr. Rizley: Same objection.

Commissioner Armstrong: Same ruling.

A. I think the leases will speak for themselves. I can not give the terms of the lease. Actually what we do is to take the gas from the leases and sell it to the Northern Natural. I will be glad to introduce the leases in evidence."

Q. I am assuming the provisions of the leases are of the regular lease form but in your particular case you do pay Mr. Jones or Mr. Brown or any other man 5 cents for his part of the royalty, or your company does."

Mr. Rizley: We object for the reasons heretofore given. [fol. 249] Commissioner Armstrong: Same ruling. Overruled and Exception allowed.

A. We pay 1/8 of 5 cents to the lessor for the gas we take.

Q. And then you take that 1/8 and transport it into Kansas?

Mr. Rizley: Same objection.

Commissioner Armstrong: Same ruling. Overruled and exception allowed.

A. I say the lease will speak for itself, I am not getting into any legal question.

Q. I am trying to ask, as a matter of fact you take that regardless of what the lease provides and transport that gas through your gathering system to a point in Kansas and there sell it to the Northern Natural?

Mr. Rizley: Same objection.

Commissioner Armstrong: Overruled and exception allowed.

A. I think I have answered that as clearly as I can. We pay every lease holder 1/8 of 5 cents for the gas and we transport all the gas from the wells to the Northern Natural Gas Company."

Q. I will ask you if this statement is right. You take 1/8 of the gas or whatever your lease provides and pay your [fol. 250] royalty owners five cents and you transport that to Kansas and sell it to the Northern Natural is that right or wrong."

Mr. Rizley: Same objection.

Commissioner Armstrong: Overruled. Exception allowed.

A. As I get it you ask me for an interpretation of the lease and I do not have it before me but I know that is what we do.

Q. Is this fair, if it is not fair you do not have to answer, do you pay the royalty owner five cents, is that the price that you sell it to the Northern Natural at."

Mr. Rizley: Same objection.

Commissioner Armstrong: Overruled. Exception allowed.

A. We do not pay the royalty owners 5 cents we pay him 1/8 of five cents for all the gas we take from his wells."

Q. Do you sell it at the same rate to the other company, the Northern Natural Gas Company.

Mr. Rizley: We object, the same reason.

Commissioner Armstrong: Overruled. Exception allowed.

A. We charge 6 cents for that, the extra cent is for gathering it.

By Mr. Foulston:

Q. It is the usual provision in the lease on royalty is it [fol. 251] not. It is turned into the pipe line 1/8 paid on his gas produced from the well, is that right."

Mr. Rizley: Same objection.

Commissioner Armstrong: Overruled. Exception allowed.

A. That is the lease; that is what we do."

Commissioner Armstrong: Does the Republic Gas Company pay these royalty owners each month or does the Northern Natural pay it?

A. We pay it.

Mr. Pruet: I believe that is all.

Mr. Rizley: Let the record show that the respondent moves to strike out all the testimony, all of the questions and all of the answers heretofore offered by counsel for the reason same are incompetent, irrelevant and immaterial,

have no bearing upon the issue involved in this case and for the further reason it is the improper way to prove admission against interest and for the further reason that the witness is present now in Court who testified at that time and for that reason the testimony is immaterial.

Commission Armstrong: What purpose are you offering this?

Mr. Pruet: I am offering it for this reason. It shows to my mind they are doing one or both of two things. They [fol. 252] are either a common purchaser by reason of the fact they are purchasing gas and selling it or a common carrier by reason of the fact they are charging a fee for transporting gas. It is bound to prove one or the other of two things.

Commissioner Armstrong: Overruled and Exception allowed. The testimony will be offered for whatever it is worth.

R. E. Cullison, a witness being called and being sworn, testified in answer to the interrogatories propounded, as follows:

Direct examination.

By Mr. Pruet:

Q. You may state your name please.
A. R. E. Cullison.
Q. What is your business?
A. I am a lawyer.
Q. With whom are you connected?
A. Cities Service Gas Company.
Q. In the capacity of one of their attorneys?
A. General Attorney.
Q. You agree that this may be introduced without identification?

Mr. Foulston: I agree that the exhibit you hold in your hand is a form, printed copy of the contract between the Republic Natural Gas Company and the Cities Service Gas [fol. 253] Company.

Q. (Mr. Pruet) I want to ask you about—do you know anything about the arrangement under and by virtue of which the Republic Natural Gas Company is taking gas

from the Cities Service Well located in 12, Township 4, North, Range 14, in Texas County?

A. I suppose I do, but I cannot identify the property.

Q. Could you secure for us the contracts or arrangement under and by virtue of which that is being done?

Mr. Foulston: I will be glad to state for the record, when we get to our case we will produce the arrangement or introduce the arrangement for that well.

Q. (Mr. Pruet) The Burge well, located in section 20, Township 6, Range 16, that the Republic is taking gas from,—do you have the contract or arrangement under and by virtue of which that is being done?

[fol. 254] A. Yes, we have somethin-. I don't identify the well some way or other.

Q. Do you have the information on that?

R. E. Foulston: Except the facts that he had that the well belongs to Republic.

Q. What do you have?

A. We bought the well and paid for it.

R. E. Foulston: We have here the contract and the Bill of Sale filed in Texas County Oklahoma.

Earl Pruet: Do you intend to introduce into evidence anything on that point as part of your case?

R. E. Foulston: Yes, to this extent. I don't want to mislead you, I bought this well and paid for it and the bill of sale is on record and is a part of the records in Texas County, Oklahoma.

Earl Pruet (to witness on stand): Will you have your company forward to you the various contracts and arrangements and records of all kinds which your company has reflecting the contract between yourself and Cities Service and Republic Natural Gas Company, in Section 12, Township 4, Range 14, in Texas County, Oklahoma?

A. Yes sir.

Q. Will you do that?

A. Yes.

[fol. 255] Q. Will you also procure for me the same reference to the Burgess well in 20-6-16?

A. Yes.

Q. What I want to know, what was the entire deal as to Republic taking gas from those wells and did they pay you

for them and for the gas or whatever arrangements they have had at any and all times with the Cities Service as far as they are concerned with Section 12, Township 4 North, Range 14 East and Section 20, Township 6, Range 16?

A. Just the instruments that show what each or either of the parties or both did.

Q. That is exactly what I want to know and if there is anything else if there was any gas bought and sold either way, I want that, I want the whole transactions as reflected by these two companies.

A. Transactions in their entirety.

Q. Any transaction by and between your company and the Republic Natural Gas and their representatives at any and all times.

A. And if anyone else is involved you don't want that?

Q. I don't think I will, all I am interested is between you and the Republic, it might be that there was something that might show up, and throw some light on it if some others are interested in the transactions.

A. Well there is, I didn't know whether you wanted that or not.

[fol. 256] Earl Pruet: I would like to reserve the right if we desire to add any further evidence, I would like to examine the instruments and introduce them, and with the reservation to introduce these records, we will close our case at this time.

Cross examination.

By R. E. Foulston:

Q. Generally speaking, do you know if the transactions, do you know whether or not the Republic Natural Gas, through Robert E. Foulston bought and paid for the Burge and Wheeler Wells?

Earl Pruet: We object to that because the records are the best evidence and we have asked for them.

R. E. Foulston: Yes the records will be here, they are the best evidence.

Earl Pruet: The applicant rests, Your Honors.

R. E. Foulston: At this time, and after the applicant rests I would like to save the record and renew the Motion

If Your Honors please, to dismiss the pleadings herein, for the reasons set forth in our pleadings, in response to the answer filed in this case, for the reason that the evidence fails to show any right or power to hear this case and for the reason to make any order relating to the breaking of its pipe line market and taking into the line the gas from [fol. 257] Section fourteen which it does not need and cannot use, etc., and for the further reason that the evidence fails to show any obligation on the part of the Republic Natural Gas to purchase any gas from the Peerless Oil and Gas Company.

Chairman Bond: The Commission will reserve the right to rule at this time.

[fol. 258] Thereupon, M. L. Ferguson, of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By R. E. Foulston:

Q. You may state your name?
A. M. L. Ferguson.
Q. Where do you live?
A. Dallas, Texas.
Q. What is your connection, if any, with the Republic Natural Gas Company?
A. Superintendent of Gas Operations.
Q. You are familiar with the Houghton Field?
A. Yes sir.
Q. That is part of your business?
A. Yes sir.
Q. You have spent considerable time in the field?
A. Yes sir, quite a bit of time.
Q. And you are the person who attends the meetings of the various Commissions who assume jurisdiction in the matter?
A. Yes sir.
Q. And for the purpose of attending the allowable hearings, etc.?
A. Yes sir.
Q. And in connection with your work, you are familiar with the general location of facilities and markets in that field?

[fol. 259] A. Yes sir.

Q. Do you have a map showing the locations of the various pipe lines in the field as well as the gathering systems in the field?

A. I have.

Q. Now I will have the reporter mark Exhibit Fourteen here, Mr. Ferguson you have referred to a map and the Reporter has marked this map, Exhibit Fourteen, is that the map to which you refer?

A. It is.

Q. And that shows generally the pipe lines, gathering systems in the Houghton Field?

A. It does.

Q. As of what date?

A. The date on the map shows September 12, 1941, however since that time it has been brought up to date.

Q. Can you tell approximately what date it has been brought up to?

A. As far as the Pipe Lines shown on it, it would be up to the present time.

Q. There is considerable drilling going on there in that field?

A. There is.

Q. From the Arkansas River to Texas County?

A. Yes sir.

Q. This map does not show all of the wells recently [fol. 260] drilled or in process of drilling?

A. It does not.

Q. But in the last year or two it is substantially accurate?

A. It is.

R. E. Foulston: We offer the map in evidence.

Earl Pruet: I would like to ask some qualifying questions.

Q. What pipe lines are shown on the map?

A. The pipe lines of Tri-County Gas Company, Kansas Natural Gas Company, Panhandle Eastern Pipe Line Company, Colorado Gas Utilities, Northern Natural Gas Company, Cities Service Gas Company, Argus, and it shows of course the gathering system of the Republic Natural Gas Company.

Q. Everyone has a pipe line except Republic and they have a gathering system?

R. E. Foulston: I object to that, you ask about the pipe lines and state that they have a gathering system, isn't it a pipe line?

A. It is.

R. E. Foulston: It is the gathering system part that I object to.

Chairman Bond: Sustained.

Exceptions allowed.

[fol. 261] Earl Pruet continues in qualifying the witness on the stand:

Q. Where did you get the evidence and information placed upon that map?

A. The information was taken from the records furnished by the various companies as to the location of the lines on the maps.

Q. Do you know this or is it what someone else told you?

A. To the best of my knowledge this information was taken from information furnished by the various companies. That is the only way we could get the information.

Q. You didn't report to the Commission of this state as to the Pipe Lines did you?

A. I don't think we did.

Q. You didn't obtain any of the information for the Utilities Commission of Kansas and the Corporation Commission of this State?

A. No sir.

Q. Does this purport to cover the entire Hougton field?

A. Yes sir.

Q. And the length of the map is what direction?

A. North and south.

Q. The Hougton Field runs north and south, lengthwise?

A. The top of the map is north.

Q. It is north up here? (Points to the top of the map)

A. That is right.

[fol. 262] Q. What do you have on here other than the location of the wells? Do you have the pipe lines?

A. We have shown in red pencil the boundary lines both in the State of Kansas and Oklahoma and States of Oklahoma and Texas, the gathering system or pipe line of the United Carbon Company, the Columbian Carbon Company, and of the Liberal Gas Company. It has three wells west of Liberal, Kansas.

Q. What does the red circles represent in 35 38?
A. The red circles are unconnected wells.

Commissioner Armstrong; Exhibit 14 is received into evidence.

Witness excused.

[fol. 263] Thereupon, ELMER CAPSHAW, of lawful age, having been first duly sworn, testified as follows:

Direct examination.

Conducted by R. E. Foulston:

Q. State your name please, Mr. Capshaw.
A. Elmer Capshaw.
Q. You were on the stand on yesterday.
A. Yes sir.
Q. At that time I asked you if you would be willing to indicate on a map to be furnished you with the localized lands of the so called Hugoton gas area of Oklahoma and Kansas and you said you would with certain qualifications, you would make a red mark on this map, and you have made a red mark on Exhibit 14?
A. Yes sir.
Q. And I believe you told me you would like to make some expla-ation to the Commission, would you do that at this time?
A. I would like to make this explanation, it is a very large field and of such a very large extent, to make a good outline of the producing area of this field would require a great amount of study of the field. I have not made that study and have not had the opportunity to do so and merely confroming to the request of the attorney to furnish this outline. I don't know for what purpose but I am doing it in con-rmance of his request, but I wish the Court to understand that I have not based any of my testimony upon this map as outlined.
[fol. 264] Q. I gather that you feel that there is some reason why you should not try and locate exactly the present known lines of the field in red pencil on this map marked Exhibit 14, now you have attempted to show within that red line, within that egg shape elliptical figure what in your opinion are the wells within the proven Hugoton Field?

A. I would say within the probable productive limits of the field.

Q. You say that you have not had the information to enable you to determine the Hugoton limits?

A. That is right.

Q. Do you think that there is any information available whereby anyone could testify as to the limits?

A. Not very well.

Q. From the information that you have and the general knowledge of the field do you feel that the lands located in the circle or within the lines drawn are reasonable and are within the productive lands of the field?

A. Yes sir.

Q. Do you think your line may be too restricted?

A. That line might be changed very greatly inward or outward upon additional information and some of it might be available at this time.

[fol. 265] Q. At this time it represents your approximation?

A. That is right.

Q. And further drilling and further information about the field may bring in the line or may expand it?

A. That is right.

Q. You do not have any information to bring into court that would be any more accurate for us as to the Common Source of Supply?

A. No sir.

Q. I see in some places you have run off of the map?

A. Yes sir.

Q. You think that this field runs further than what shows on the map in some places?

A. That is right.

Q. That is because the map is not big enough that the red line is not around all of it here?

A. That is right.

Q. Do you know how many wells now are drilled into this socalled producing area and capable of producing gas in the field as outlined by the red pencil mark, approximately, I know that there is so much drilling in there that one can not keep up with it?

A. I think approximately 440 wells in Kansas and Okla-

[fol. 266] homa. All I know is only word of mouth in the Texas wells.

Q. About 400 to 450 wells?

A. I think 440 would catch them out in the field.

Q. You have some knowledge in the north part of the Prairie up along the Arkansas where they have completed ten new wells?

A. I might have there in my records.

Q. Isn't there drilling going on at such a rapid pace with what may be accurate today and tomorrow it would be inaccurate?

A. That is right.

[fol. 267] By Mr. Foulston:

Q. Mr. Capshaw, how would you divide that, 450 wells between Oklahoma and Kansas?

A. Approximately 100 wells are in Oklahoma and approximately 340 wells in Kansas, and I don't know about the Texas wells down there.

Q. How long have you been with the Commission?

A. I have been with the Commission something over ten years.

Q. Then you have been familiar with this field for a long time?

A. I would say I have had little knowledge of it prior to the last two years.

Q. Do you have any—do you have enough knowledge to know how this development has progressed; that is, where the wells were drilled in the first instance, and where they have been more recently extended in the drilling operations—would you care to give us a general statement of that or would you care to do that?

A. I am quite familiar with the Drilling in Oklahoma but not so familiar with that in Kansas.

Q. The first wells were drilled in Texas County by what Company?

A. That is a question I wouldn't answer because I really don't know.

[fol. 268] Q. Within the last five years, how many new wells have been drilled in Oklahoma?

A. Within the last year, there have been approximately sixty five wells drilled.

Q. If there are one hundred wells in the Oklahoma field now, and within the last year sixty five were drilled, prior to that time there were thirty five wells in the Oklahoma field or approximately that number.

A. I tested thirty four wells, and there were a number of unconnected wells a year ago this summer.

Q. Then drilling started in Texas, and sixty five wells were drilled in the Oklahoma field last year?

A. Yes sir.

Q. And the end is not yet?

A. That's right. I think Cities Service has six rigs going now, and the Republic has two or three going.

Q. And there are other drilling programs in progress?

A. Yes sir.

Q. And what other Companies that you know of?

A. You mean, on the Oklahoma side?

Q. Yes.

A. I know the Cabot contemplate drilling some wells. I don't think they have been started. I have heard of a [fol. 269] location of the Skelly, and the Phillips has a very extensive program in progress on both sides of the line in Oklahoma and Texas and have drilled a number of wells.

Q. Do you consider that the wells being drilled and contemplated south of the Oklahoma line in the Texas field are in the same common source of supply in which the other wells in Oklahoma and Kansas are located?

A. That's right.

Q. How far that goes down into Texas you don't know?

A. No.

Q. And you don't think anybody knows?

A. I wouldn't answer that at all.

Redirect examination of Mr. Capshaw.

By Mr. Pruet:

Q. Those wells shown on that map are drilled into and producing out of the same common source of supply?

A. I think that's right.

Mr. Pruet: That is all.

Thereupon Mr. Alfred Hurlburt was recalled to the witness stand for further direct examination by Mr. Foulston.

Q. You may state your name to the Commission.

A. Alfred Hurlburt.

Q. And your residence.

[fol. 270] A. Dallas. (Texas).

Q. And your connection with the Republic Natural Gas Company is what?

A. I am Vice President.

Q. I don't want to impugn the record of the reporter, but have you ever been the President or part owner of the Republic Natural Gas Company?

A. I have never been the President. I have owned some of the stock.

Q. How long have you been the Vice President of the Republic Natural Gas Company?

A. I have been a Vice President since the organization.

Q. Who has been the President of the Company since its organization?

A. W. H. Wildes.

Q. Would you say that the statement read to the Commission from the record in the O'Loughlin case, that you were President of the Company, must have been a typographical error of the reporter or otherwise?

A. It must have been.

Q. To your knowledge, have you ever testified at any place or at any time that you were the President of the Republic Natural Gas Company?

[fol. 271] A. No sir.

Q. When did you become Vice President of the Republic Natural Gas Company?

A. The Republic Natural Gas Company was organized as of July 1st, 1935, and back there, there were a number of subsidiary companies at that time, of which I was Vice President, and I became Vice President of the new Company.

Q. For the purpose of the record, I wish you would state to the Commission what your training has been along the line of the gas business, academic training first, and then your actual experience in the gas fields and gas business.

A. I am a graduate of Cornell University, in mechanical engineering, in 1897. I entered the manufacturing gas business in 1898.

Q. Where was that?

A. That was in Jersey City. I was employed by the United Gas Improvement Company, at that time, who owned Kansas City, Missouri, and Kansas City, Kansas, and a number of other gas properties in the middle west.

And I was sent to Kansas City, Missouri, in 1906, and in that year I had charge of converting the city from manufactured gas to natural gas. I remained as the operating engineer of that property, and had very close contact with the production of natural gas, and particularly the trans- [fol. 272] portation of gas. The United Gas was heavily interested in the supply companies——

Q. My attention has been called to the fact as to whether or not you have been sworn to testify in this cause.

A. I guess I have not.

Q. Will you please stand and be sworn?

Thereupon the witness, MR. ALFRED HURLBURT, of lawful age, was duly sworn, by Commissioner Armstrong, to testify the truth, the whole truth, and nothing but the truth in this cause.

By Mr. Foulston:

Q. If I were to ask you, under oath, the same questions I asked you before you were sworn, would your answeres be the same?

A. Yes sir. I remained in Kansas City until 1920, and in that year——

Q. May I interrupt you to ask you your capacity with reference to being a technical man——

A. I had the responsibility for all technical and operating problems of the Kansas City Gas Company at that time.

Q. All right, proceed.

A. In 1920, I went to Pittsburgh as Vice President of the Equitable Gas Company—Vice President of the Pittsburgh and West Virginia Gas Company which were an [fol. 273] affiliate of the Philadelphia Company which purchased, produced, transported and sold gas in the vicinity of Pittsburgh and in Pittsburgh. I stayed there until 1829. I went to the United Gas Improvement Company as a consultant about a year and in 1929 and 1930 I was in charge of the introduction of natural gas into a number of southern cities on the Southern Natural Gas Company's line; namely, Atlanta, Rome, and a number of other smaller towns that were owned by the then Central Public Utilities. After that was finished, I went as Chief Engineer for the Central Public Utilities in Chicago, and I stayed there until they collapsed in 1933, when I went to south Texas in charge of these properties that we are now operating.

Q. When did you first become familiar with the Hugoton Gas field, so called?

A. I paid my first visits to the Hugoton Gas field in 1933 and for several years spent a good deal of time there.

Q. Have you then followed that development from the early days of the first production?

A. I have been in very close contact with the operations since 1933, and have gone over a good deal of the records of the work that was done before then.

Q. In connection with your office with the Republic Natural Gas Company, was the geological and construction [fol. 274] work carried on under your supervision and direction?

A. Yes sir.

Q. And in the installing of the gathering systems of the Republic Natural Gas Company, other than those existing when you came there, you have had supervision of them and you know about them?

A. Yes sir.

Q. And the drilling of wells since 1933 has been under your supervision?

A. Yes, this has been under my supervision.

Q. When did the Republic Natural Gas Company drill its first well in Oklahoma in the Hugoton area?

A. My recollection is that the first wells were drilled either late in 1937 or else in 1938. I know the cause of it but I cannot give you the exact date.

Q. Say in 1937 or 1938, at that time, how many gas wells were producing in Texas County that you know of?

A. We had three small wells just south of the State line that were connected to our system in Kansas. Cabot Carbon Company I believe had about three wells. The Cimarron Utilities had a well or two and there was—sometime along there, two Wiggins wells were drilled. The rest of them were so far out of the district of operations that I didn't keep track of them.

[fol. 275] Q. Then you began drilling some wells in Oklahoma?

A. We drilled a series of wells just south of the State line along in 1938. I believe it was in '38, and I think we drilled some more in 1939, and then we rested until last year—this year—until last year.

Q. Your last account of the wells in the Hugoton field and within the area indicated by the red line on Exhibit No. 14

as placed there by Mr. Capshaw, how many present wells are there producing in that field—drilled—excluding Texas from it?

A. I think there are, as near as I can make it, four hundred fifty wells and there are probably forty-five drilled and not connected. Now, there may be a variation in this being accurate, but that is close to the facts.

Q. How many wells in Kansas and Texas County does the Republic Natural Gas Company own today?

A. I think we have one hundred thirty wells at the present time of which three are not connected.

Q. How many of them are located in the State of Oklahoma and how many in the State of Kansas?

A. There are ninety-two in the State of Kansas, which would give us thirty-eight in Oklahoma.

Q. At the time you became the executive Vice President or [fol. 276] Vice president in charge of this operation for the Republic Natural Gas Company, did the company acquire any contracts and gathering systems or did it possess any such?

A. Yes.

Q. What does that consist of?

A. We had a contract with the Northern Natural Gas Company that was made, if I recollect exactly, in 1930—that's right. I know it was amended just after—or just at the time that I took charge, which was along in—it was made about a year before—it didn't go into effect until after I got in charge. The new contract—or amended contract—was made July 1st, 1932.

Q. I hand you a document which has been identified as Exhibit No. 15, and will ask you to state whether or not that is a conformed printed copy of original purchase contract. Is that a copy of the original gas contract of May, 1930, which in July of 1932 was amended and supplemented, and of the Amendatory and Supplemental Agreement of April 5, 1937, including the Indenture of April 5, 1937?

A. It is.

Q. That comprises the arrangement which you made and now have with the Northern Natural Gas Company for the delivery of gas to it?

[fol. 277] A. It is. (does.)

Q. Under the terms of that agreement—according to that agreement—These contracts are all of record?

A. They are all filed of record in the Counties in which we do business, I believe.

Q. Now, Mr. Hurlburt, I call your attention to Exhibit A Attached to the contract—Amendatory and Supplemental Agreement—on page ten, the printed page ten, Exhibit A.

A. Yes, it is page ten, back here.

Q. I call your attention to Exhibit A headed Acreage Held by Producing Wells included in the minimum reserve. Do you see that?

A. Yes, sir.

Q. Following that is the name of some hundred or more leaseholders, Description, County, and Amount of Acreage.

A. Yes, sir.

Q. Has that minimum reserve—I mean, has the acreage, reserve been changed from time to time.

A. Very materially.

Q. Under the existing arrangement with and between the Northern Natural Gas Company and the Republic Natural Gas Company, is the Republic Natural Gas Company required to maintain a number of acres dedicated to the supply of that market?

Mr. Pruet: That is objected to as not being the best evidence. The contract is the best evidence.

[fol. 278] Chairman Bond: The objection is overruled. Exception allowed.

By the Witness:

A. Under the contract we must maintain at least fifty thousand acres approved by the Northern Gas Company.

Q. Have you got that much now dedicated to that purpose?

A. My recollection is, the last figure was a little over—a little under sixty thousand acres have been approved and held by the Republic Natural Gas, and therefore in the minimum *in the minimum* reserve, and we are also holding some twenty thousand other acres for minimum reserves.

Q. Incident to the existence and validity of this contract, what provision is made—what requirement is made of the Republic Natural Gas Company concerning the maintenance of reserves and the nature of open flow and otherwise?

A. The contract originally called for a certain stated minimum open flow but as that open flow—but as the mini-

mum has been exceeded by the amount of gas, the requirements are that the Republic must maintain an open flow of over four times their average daily needs but in order that we may deliver gas to any other customer we must have ten times the open flow of their average daily needs.

[fol. 279] Q. What is that average daily need as indicated in your answer?

A. The average need today is about seventy million feet —not quite that—but we have an open flow of something over two billion feet.

Q. Under your contract you must maintain connected to your system——

A. That's right——

Q. A gathering system?

A. Yes, sir.

Q. That delivers seven hundred million open flow daily capacity?

A. Yes, sir.

Q. How much open flow do you have on the wells owned by the Republic Natural Gas Company in Kansas and Texas County, Oklahoma? At this time?

A. Something over two billion feet.

Q. So you more than twice exceed—you have now on top of the ground, completed wells, considerably over twice the minimum requirements of your contract?

A. Yes, sir.

Q. You have dedicated how many acres held by production?

A. Right in the neighborhood of sixty thousand. That figure has been changing so much I cannot keep the exact [fol. 280] figure in my mind.

Q. In addition to the acres necessary to be maintained as dedicated reserves, does the Republic have other leases held by delayed rental payments?

A. Yes, sir.

Q. About how many acres, in excess of sixty thousand acres, are held by the Republic in Texas County, Oklahoma, and the State of Kansas?

A. The two together, that is something in the neighborhood of two hundred thousand.

Mr. Foulston: I now offer in evidence what has been identified as Exhibit No. 15.

Chairman Bond: Received.

Mr. Foulston: Exhibit No. 15 has a great deal in it as to price.

Chairman Bond: The commission is not considering price at this time. We do not rule it is incompetent, irrelevant and immaterial, but we rule that it is not under consideration at this time.

By Mr. Foulston:

Q. Mr. Hurlburt, are your deliveries made to the Northern Natural Gas Company at some point?

A. They are all made at a point about three miles east of Hugoton—directly east of Hugoton.

[fol. 281] Q. Is that indicated on Exhibit No. 14?

A. It is.

Q. Is that the place marked Hugoton on the map?

A. It is in Section 19-33-36 Kansas.

(Continued on next page).

[fol. 282] Mr. Foulston:

Q. That is where you deliver, is that the idea?

A. That is the point of delivery.

Q. Is all of the gas which the Republic Natural Gas Company sells to the Northern Natural Gas delivered to the Northern Natural Gas at that point of delivery which you just identified?

A. It is.

Q. Do you deliver any gas at any other places to the Republic Natural Gas Company?

A. To the Northern Natural Gas?

Q. No, sir.

Q. Is that the point of delivery?

A. I will say, sometime ago——

Q. I am speaking now, at this time.

A. No.

Q. Sometime ago you had an inter-connection?

A. We had an inter-connection with their Argus Company.

Q. But that inter-connection and this point of delivery which you have just described is all located within the Hugoton field as outlined by Mr. Capshaw on Exhibit No. 15.

A. Yes, sir.

Q. Does the Northern Natural Gas Company purchase gas from other persons save the Republic?

A. It does.

Q. Will you name the other sources of supply that the [fol. 283] Northern Natural Gas Company has?

A. Well, I would have—Mr. Ferguson, will you let me have the list of the Corporation Commission of Kansas, please. I know some actually but I cannot remember all of these things.

Chairman Bond: The Commission will adjourn to 1:30 P.M.

Thereupon the hearing was adjourned to 1:30 P.M.

And now the hour of convening having arrived, all parties being present, the Commission being present, the hearing of said cause is resumed and the following proceedings are had and done, to-wit:

Mr. Alfred Hurlburt, the witness who was on the stand before recess, now resumes the witness stand and answers the interrogatories propounded to him as follows:

By Mr. Foulston:

Q. State, if you can, briefly, so as not to take time, the name of the supplier of Northern Natural and the approximate number of wells of each one.

A. Derby Oil Company have one well; Helmerich & Payne, three wells; Kuhn Brothers, three wells; United Production Company, 15 wells; Stephens County Okl and Gas Company, one well; Finkker Oil & Gas Producing Company, one; in addition thereto we have——

Q. How many wells does Republic have connected to [fol. 284] the—from which it delivers gas to the Northern Natural?

A. Well, all the wells that the Republic have are——

Q. Let me withdraw that question. I will get at it another way. Does the Northern Natural Gas Company have some of its own wells from which it supplies part of its market?

A. Last report was seventeen.

Q. Do you know whether they are drilling other wells of their own?

A. They are.

Q. So the Northern Natural Gas takes its supplies from those several sources which you mentioned?

A. Yes, sir.

Q. Do you know where the Northern Natural Gas delivers its gas or sells its gas ultimately—generally?

A. It sells its gas through the western part of the State of Iowa, eastern part of the State of Nebraska, southern part of Minnesota and in the southeast portion of South Dakota and they do sell a little gas in Kansas,—a very small amount.

Q. And what size pipe line does the Northern Natural have leading out of the field?

A. They have a twenty-inch line from our delivery point going northeast, mostly east.

Q. How large a line do they have of the main line going into Minnesota?

A. The main line is a twenty-six inch coming from Texas and it was originally a single twenty-four inch line from Mayesville, Kansas, north, but that has been paralleled in [fol. 285] a good many places. I couldn't give you the exact——

Q. There is another company which takes gas out of the Hugoton field known as the Panhandle Eastern.

A. Yes, sir.

Q. Where does that company take its gas?

Q. That company takes its gas in a general northeasterly direction and into Missouri, Indiana, Michigan. It has a very large market in Michigan, I know.

Q. Now, the Panhandle-Eastern takes part of its Natural gas from the Hugoton field as defined by Exhibit 15.

A. It does.

Q. From whom does it purchase gas?

A. Well, it produces a considerable amount of its own gas.

Q. Do you know how many wells it has of its own.

A. Last report was thirty-four. They are still drilling some up there.

Q. In Kansas?

A. In Kansas, yes.

Q. Do you know whether or not the Panhandle-Eastern takes any part of its gas directly out of the Texas County portion of the Hugoton field?

A. The testimony—that is all I can speak for in this case here, was Charley Hinton,—that they got it from one well

which testimony was repeated yesterday by the auditor of some company here. It amounts to very small.

Q. Who else does Panhandle-Eastern purchase its gas from?

A. Panhandle-Eastern Pipe Line Company and Saturn [fol. 286] Oil and Gas Company. They have got thirty-two wells, Panhandle-Eastern, and Dunn & Hoffman they have three wells. Panhandle-Eastern Pipe Line Company and McNabb Oil & Gas Company, they have four wells; Benedum & Trees, 7 Wells; Columbia Fuel Company, 10 wells; Kinney Coastal Oil Company, 1 well; Kuhn Brothers, 6 wells; F. P. Parish, 5 wells; Pioneer Petroleum Company, 3 wells; Sidwell, 2 wells; McNabb Oil & Gas Company, 1 well; Stephens Oil & Gas Company, 13 wells; M. J. Sullivan, 1 well; United Production Company, 15 wells; R. K. Wilson, 5 wells.

Q. That is generally the supply of the wells from which the Panhandle-Eastern takes its supply?

A. That is practically the total supply that the Panhandle-Eastern gets out of the Hugoton field.

Q. Do you know whether they take any out of Texas?

A. Oh, yes, got a lot out of Texas.

Q. That may or may not be a part of the Hugoton field as Mr. Capshaw has indicated.

A. I doubt any part of the field they are in belongs to the Hugoton field.

Q. Now, do these takes and purchase of gas by these companies you described, vary from month to month?

A. Oh, yes.

Q. Or from year to year?

A. Very greatly.

Q. From season to season?

A. Yes, sir, day to day?

[fol. 287] Q. I want to go back on one matter. At the point of delivery where the Republic Natural Gas Company delivers its gas, is there a compressor station near or at that point?

A. No sir. The nearest station on the Northern Natural Gas Company to the point of delivery by Republic is their sublet station which is approximately twenty-five miles northeast.

Q. Does this gas, after being delivered by Republic to the Northern Natural Gas, go into any process operated by Northern Natural?

A. All the gas that the Republic Natural Gas Company delivers to the Northern Natural Gas Company goes through a dehydrator and then through a gasoline extraction plant.

Q. Is it or is it not co-mingled with the gas that it produces itself and the other producers and supplied to the Northern at that point and in that extraction process?

A. No. There is some gas delivered to the Kansas Natural—I mean to the Northern Natural Company, to their old Argus Company, which goes to the towns in Kansas.

Q. You didn't get my question. After the delivery of that gas by these various producers at the point of delivery which you described in section 19, that is where all the gas goes into the main line, flows together, is it?

A. Yes, sir.

Q. And that is all mixed together in this process you have described?

A. All goes through the same treatment.

[fol. 288] Q. That is all located within the confines of the field indicated by Mr. Capshaw's lines on Exhibit 15?

A. Yes, sir.

Q. I suppose it isn't necessary to fix the date, but the 7th of December, 1941, this country got into war, did it?

A. Well, I couldn't fix the date. I ought to, but I can't.

Q. And up until that time what other purchasers from the Republic of Natural gas were there in the Hugoton field?

A. From the Republic?

Q. Right.

A. The Republic purchased no gas.

Q. I say, what purchasers of gas from Republic?

A. Oh! There was no purchasers of gas except the Northern Natural Gas Company and a few domestic consumers on the right-of-ways.

Q. Then, at the time of the declaration of War, all of the gas which the Republic Natural Gas sold, that went from that field, was the one customer and the supply to the Northern Natural Gas Company of a part of its demands, is that right?

A. Yes, sir.

Q. Does the Republic Natural Gas have any relationship, any interest in, stock ownership, interlocking records, subsidiary relationship to the Northern Natural Gas Company?

Mr. Pruet: We object, as a conclusion of law.

Mr. Foulston: I will shorten the question.

Chairman Bond: Very good.

[fol. 289] Mr. Foulston:

Q. Are there any directors or officers which are common to the Republic Natural Gas Company that are in the Northern Natural Gas Company?

A. There are none.

Q. Does the Republic Natural Gas Company own any stock or otherwise—interested in the Northern Natural Gas Company?

A. It has no interest.

Q. So far as you know, does the Northern Natural Gas Company have any interest in the Republic Natural Gas Company?

A. It hasn't any interest in the Republic Natural Gas Company.

Q. Is, so far as you know, the relationship between these two companies, that of one of contract of purchaser and seller of natural gas at the points that you described, and not otherwise?

Mr. Pruet: We object as a conclusion of law.

Chairman Bond: Probably you better state the facts.

Mr. Foulston:

Q. Are there any other relations that you know of, existing between these two companies other than that as shown by the contracts?

A. No, sir.

Q. You are in a position to know, are you?

A. Yes, sir.

Q. Now, after the declaration of war, were there certain bureaus and agencies in Washington which took over control of part of the field, so far as drilling and production was concerned?

[fol. 290] A. The Petroleum Administrator for War—I don't know how it was organized, but it had power and issued——

Q. Assumed power.

A. It assumed power and issued an Order known as M-68, which prohibited any drilling of any gas wells without a permit by your Commission and that agency and after that

agency granted its permit, further had to get a permit for materials from the War Labor Board.

Q. Growing out of that emergency situation, did the Republic Natural Gas Company enter into certain contractual relations with the Cities Service Company?

Mr. Pruet: We object, calling for a conclusion of the witness.

Chairman Bond: Ask him whether he knows or not they made a contract.

A. I do.

Mr. Foulston:

Q. Do you know?

A. Yes, sir.

Q. Did the companies enter into a contractual relationship?

A. The companies entered into contractual relationship and submitted the contract to those agencies before it was executed.

Q. Was that contract initiated, executed- initiated, negotiated and submitted to and approved by the Petroleum Administrator of War before it was signed by the parties?

Mr. Pruet: We object to that. We think the proper way to prove that is to prove what happened.

[fol. 291] Chairman Bond: Are you raising the question we must show the approval of the Administrator of War; his actual approval of the contract, that is the best testimony, not the testimony of the witness.

Mr. Pruet: I think the instruments themselves, whatever were executed, would be the best evidence.

Mr. Foulston: The contract is already in evidence and was offered by Mr. Pruet this morning. I want not to refer to——

Chairman Bond: You can refer to the contract and quote from it.

Mr. Pruet: I haven't offered it. I had this identified with the understanding if later, in connection with 'price', if I wanted to introduce it.

Is that the contract between you and the Cities Service?

Mr. Foulston: That's right.

Mr. Pruet: I haven't introduced it because I haven't had the opportunity to read it.

Mr. Foulston:

Q. Did they make the contract and is Exhibit No. 13, identified by the applicant this morning the form, printed copy of the contract which was made and which you have already indicated in your answer?

A. It is.

Q. That contract, I call your attention to this provision of the contract——

[fol. 292] Mr. Pruet: I object to calling attention to the provision of it until it has been offered in evidence.

Mr. Foulston: I offer it in evidence for all purposes except price fixing purposes heretofore indicated by Your Honor.

Chairman Bond: Received.

Whereupon the Contract and Exhibit above mentioned, being Exhibit 13, so offered and admitted in evidence, is in words, letters and figures as follows:

This Exhibit is the same as Exhibit #50.

[fol. 293] Mr. Foulston:

Q. This is the supply contract that was mentioned, Exhibit 13, paragraph 16 provides, "The term of this contract shall be for two years from date of first delivery and thereafter until cancelled by six months written notice by either party, such notice to be given on the first day of any month on or after two years from date of first delivery; however, in the event of cessation of hostilities with the Axis Powers during the stated term hereof, this contract can be cancelled by either party by serving a six months written notice on the other at any time after such cessation. For the purposes of this contract the said cessation of hostilities shall mean that day when actual fighting shall cease between all the then existing governments of the United Nations (United States of America, Great Britain, Russia and China) and the Axis Powers, (Germany, Italy and Japan). Unless sooner terminated as herein provided this contract shall end and terminate twenty years from the date hereof." Now, you made that contract or the Republic made that contract with the Cities Service?

A. Yes, sir.

Q. Under the terms and conditions which you have described in your former questions and answers?

A. Yes, sir.

Q. Now, where, on the map, is the delivery point of natural gas from the Republic to the Cities Service under the terms of Exhibit No. 13.

A. The gas is delivered actually in section, southwest [fol. 294] corner of Section 6-5-15 and also in the southeast corner of section 13-4-14.

Q. Are the points which you have described in your answers the place of delivery of this gas which is being sold and delivered to Cities Service Gas Company under the terms of the contract marked Exhibit No. 13?

A. Yes, sir.

Q. Where does the metering take place?

A. The metering to Cities Service take- place at the two locations that I have just given you.

Q. At that place the gas is delivered and taken over into the actual possession of the Cities Service and becomes their gas?

A. It is.

Q. Does Republic lose all control of it at that point?

A. Yes, sir.

Q. Now, without taking the Commission's time to read the provisions of the contract, the Northern Natural Caontract, unless there is objection, I will refer to it by reference —under the terms of that contract all the facilities used by Republic Natural Gas Company as therein described in supplying natural gas to Northern Natural Gas Company, under this contract, including the leases upon which producing wells are located, are dedicated by Republic for the life of the field under the contract?

A. Yes, sir.

[fol. 295] Q. Can you point out what facilities have and were, in 1941, dedicated by these contracts to the performance of your contract with the Northern Natural Gas Company, and at this time. Strike out " '41",—now and have been dedicated?

A. All the leases in the minimum reserve which are not marked specially on this map, that is, I mean they are not colored up so they can be seen, because this map was not gotten up for that purpose.

Q. Will you point out on the map the gathering system of the Republic Natural?

A. The gathering system of the Republic Natural Gas Company starting at the delivery point makes a sort of a hexagon, going down to within a mile of the Kansas-Oklahoma state line in Kansas and as far west as within a mile and a half of the west line—the east line of Morton County and goes up to about the center of township 32-38 and to that are attached a large number of smaller lines that go into that gathering loop. Then there is, in addition to that, three small lines that go into Texas County, Oklahoma, with one ten inch line that connects up with the system that is now twelve inch, extending west from that ten inch line for a distance of eight miles and extends as a fourteen inch line southwest to what is known as the White well in Section 30-6-15.

[fol, 296] Q. Let me stop you there to make it clear as possible is the property absolutely and forever dedicated to that contract?

Earl Pruet: We object to that because the contract is in evidence.

Chairman Bond: The contract is the best evidence.

R. E. Foulston: It would be a legal conclusion, I can read the clause and ask him if the property is under the clause.

Chairman Bond: Very well.

R. E. Foulston: Alright I withdraw the question, the property which you have now described is the property dedicated is in the property as shown in Exhibit Fifteen.

Earl Pruet: We object for the same reasons.

Chairman Bond: Overruled. Exceptions allowed.

Foulston continues with the witness on the stand:

Q. This question in the property which you have described having been dedicated, is it or is it not located in the Hougton Gas Field?

A. Yes sir.

Q. Is there any part of it outside of the Hougton Field, of Exhibit Fourteen?

A. No sir.

Q. Is any part of it used for any other purpose as in the contract?

[fol. 297] A. No sir.

Q. Now lets take the part used immediately in this controversy, I call your attention to Exhibit Nine, the Fifteenth

Section shown by Mr. Elliston, that property is included within and described in your testimony as part of the field?

A. That is part of the field, yes.

Q. Now I will ask you, in order to maintain your contractual relationship, have you a judgment of the fair value of your investment of this vicinity of the wells, the lease hold estate and the agreed cost of the gathering system, as before the time of the deal with the Cities Service?

A. I don't know how best to answer that question as to the fair value of this property.

Q. Of course it grants a good deal.

A. I know we had an investment of over ten million dollars.

Q. How much rental do you pay to maintain the lease-hold estate?

A. How much of the pay?

Q. How much is the annual rental payment in the Hougton Field?

A. In the Hougton Field, you are talking about?

Q. That is right.

A. Last year we paid $89,244.18 and the year before $93,315.96.

Q. Now in this connection Mr. Hurlburt do you hold this [fol. 298] production and those non-producing leases under the terms of some standard form of lease?

A. Under the general standard form of lease.

Q. May I ask you first, do you produce any oil in the Hougton Field?

A. No sir.

Q. Does anybody as far as you know?

A. As far as I know the Standolin drilled a well up in the northeast of the field.

Q. I want to read to you those provisions in Form L. B. 88, of Section 4, "The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as much, for gas from wells where gas only is founded and where not sold shall pay Fifty ($50.00) Dollars per annum as royalty from each such well, and while such royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof."

Is that the standard clause contained in the leases?

A. Yes sir.

Q. Do you know if any of your leases are any different,

substantially then what I have just read you from this standard form?

A. To tell the truth, I have not read all of them but I have not seen them, and I do not know of any that vary from that.

[fol. 299] A. No sir.

Q. I also refer to paragraph two, mentioned in the clause I just read, "This lease shall remain in force for a term of ten (10) years and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of them is produced.", that is included in your standard form?

A. That is right.

Q. Now I want to diagress and go back to the various services to the various markets in the field you have described, does Panhandle Eastern have any other gas out there in the field for Commercial purposes?

A. Yes.

Q. Name some of them.

A. There is two highgrade, lampblack or carbon black plants in the northern part of the field in Kansas. They are located at Hitchock I believe and they are near Hitchock both of them, not far east of the town of Eulissess, one is Columbia Carbon Company, whose plant is the Peerless Carbon Black Plant.

Q. The plant has no connection with Mr. Pruets plant?

A. No sir.

Q. Go ahead.

A. Then the other is at Ryus, a little further east about [fol. 300] twelve miles east of Eulisses and there is United Plant, both of those plants have their own gathering systems and is at the Carbon Black Plant.

Q. Is there similar property in Texas County?

A. There is similar plant near Guymon, because we do not know just where the Cabot Carbon Black Lines are because we didn't ask them, and because we do have the other leases here, it is because we got the information from the operators. I think that is all of the markets I know of in the field.

Q. What about Central Utilities?

A. That goes over to Colorado, they have about four wells. I don't know where the market is, that main market was at Pueblo.

Q. Now lets take the Texas County part of the field or any market that gas is being taken from the field?

A. Yes.

Q. Do you sell to any one?

A. Yes, we sell to the Cities Service and they have their lines in the fields themselves. The transportation line comes into the field I forgot the name of it, its marked on this map erroneusly as Cities Service.

Q. The Cities Service has these production lines and gathering system in Texas County?

A. Yes sir.

[fol. 301] Q. And that is in the boundaries of the lines Mr. Capshaw gave?

A. Yes, sir, in Section 28-5-15.

Q. Is that the same point of delivery where the Republic delivers gas?

A. No they deliver Northeast and South in Northwest and Southwest of that point.

Q. In other words the Cities Service is its principal production and gathering plant?

A. Yes.

Q. And they deliver to Cities Service?

A. That is right.

Q. And they gather it and then sell it to the Chemical Company, whatever the name is?

A. I don't know what the arrangements are between the Cities Service and the subsidiaries, but I am quite sure that they deliver all of the gas at the outlot or inlot, which is in 28-5-15.

Q. Back to Exhibit Nine and Fifteen, the sections selected by Mr. Elliston that you have there before you?

A. Yes, sir.

Q. Are they located in that location in close approximity of the Cities Service Line and if so how far?

A. It is located in about four miles of the gathering lines [fol. 302] of the Cities Service.

Q. How far is it located from the Chemical Companies Lines?

A. Well that would be——

Q. In other words, how far is it from Section Fourteen to the Chemical Companies lines?

A. That would be about seven and a half miles.

Q. Seven and a half miles, how far is Section Fourteen from the lines of the Northern Gas Company or Panhandle Eastern?

A. The Panhandle Eastern have a line within approxi-

mately three miles and the Northern National, you would have to go approximately fourteen miles.

Q. Fourteen miles to Northern Natural, how far to Panhandle Eastern?

A. About three miles.

Q. How far to the Chemical Company?

A. Seven.

Q. In building a pipe line for that distance, it is not an economical matter for a producer?

A. I would not say so.

Q. How much investment in gathering lines do you estimate to be the investment of Republic in order to get its gas gathered by your property.

A. We have something over ten thousand dollars a well. [fol. 303] Q. In other words, your cost is something like over ten thousand dollars per well?

A. That is right.

Q. Now south of the loop of your gathering system you have described there is a line extending south toward Guymon, Oklahoma?

A. Yes, sir.

Q. What size line is that?

A. That is twelve and eight inch.

Q. How long is that line, approximately?

A. Approximately twenty miles.

Q. And it is not a part of the dedicated part of the Northern Natural?

A. It was previously so.

Q. Lets see if we can shorten this, it is incident by reason of a contract and it is exactly correct as shown here?

A. That is right.

Q. And by reason of the contract it can be disconnected and not be a part of the dedication line?

A. Yes, sir.

Q. What is that date?

A. Early in 1945.

Q. Unless it is disconnected, that well becomes a part of [fol. 304] the contract?

A. That is right.

Q. You are utalizing all of that line from the gas from the wells we have drilled in Oklahoma, also for the five wells we had on that line at the time we laid it.

Q. Have you made an estimate Mr. Hurlburt of the number of 640 acre locations which are within one mile of your

gathering lines that are not owned by you upon which other owners as Peerless might call upon you for connections if they can sustain their point here?

A. Not within one mile, but I have done it within three miles.

Q. Earl Pruet: We object to that and ask that it be stricken as he is merely speculating.

Chairman Bond: Maybe it is a potentiality instead of a reality, but the Commission will hear the testimony at this time, the Commission has no ruling to make at this time, but it may be ruled upon later.

Earl Pruet: We move that it be stricken:

Chairman Bond: Overruled. Exceptions allowed.

[fol. 305] R. E. Foulston continues with the Witness.

Q. I will ask you if you're familiar with this system and know of these wells that are serving for gathering purposes?

A. I have done a great deal of studying this plan and what we will have to have in the future.

Q. Have they been designed to gather gas for your own purposes?

A. They have been designed so far to take care of our contracts, and to take care of our own supplies.

Q. Calling your attention to Exhibit Nine, being a plan shown here, the Applicants Exhibit Number Nine which begins at the well located in Section 21, 15 East, 6 North, in Texas County extending in a north easterly direction and following along the line on the south part of Section Fourteen which is the section involved in this matter and shown by the Exhibit to be an eight inch line, how long has that eight inch line been in place?

A. That eight inch line was laid in 1938.

Q. Prior to that, what size line did you have?

A. As I say, there was no line, prior to that eight inch line and that eight inch line was taken out and has been replaced.

Q. The eight inch line is not there now?

A. No sir.

[fol. 306] Q. And has not been since when?

A. About four months or three months.

Q. Within the last three or four months, it was removed because of your own necessities?

A. Yes, sir.

Q. What happened?

A. We laid a twelve inch line.

Q. You had to take up the eight inch line and lay the twelve inch line.

A. That is right.

Q. Did that cost you any money?

A. It cost us in the neighborhood of a hundred thousand dollars.

[fol. 307] By Mr. Foulston:

Q. Mr. Hurlburt, then do I understand in this immediate vicinity you have spent one hundred thousand dollars within the last six months in increasing and augmenting your gathering system in order to take care of the gas for yourself?

A. That's right.

Q. Has anyone proposed to make any contributions to that pot to you?

A. Not that I know of.

Q. That was paid for by property owned by the Republic Natural Gas Company?

A. Yes, sir.

Q. And can be dedicated to the use of the Northern Natural Gas Company?

A. Yes, the Northern Natural Gas Company.

Q. Have you ever in any of these matters exercised the power of Eminent Domain or attempted to?

A. We have never exercised the poser of Eminent Domain or attempted to.

Q. Have you—prior to the advent of World War Two—except as may be argued—which I am eliminating from the question—in paying your royalty to your leaseholders—carted one foot of gas for the other person other than your [fol. 308] own, or bought any gas from any other producer?

A. No sir.

Q. Now, after the advent of World War Two, and the matter you have described—the P. A. W. institution—you have made certain commitments and arrangements whereby you have without compensation to the Republic Natural Gas Company transported gas for others?

A. That's right.

Q. I now refer to the well that Mr. Pruet spoke of—the Heisner well. Point it out on the map and give us the description, section, township and range.

A. You will have to give me a map other than this one. All right, the Heisner well belonging to the Cities Service is in 12-4-14.

Q. Were there any negotiations with the Office of the Petroleum Administration for War about some temporary arrangement with reverence to that well?

A. There was a letter from the P. A. W. requesting us to carry that gas temporarily for the Cities Service Gas Company in order to save pipe.

Q. Was any gas sold to Cities Service in that arrangement.

A. There is nothing at all in the way of any sale. The [fol. 309] Cities Service produces the gas, measures it, and puts it in our pipe line and we deduct that amount from the gas we measure and sell to the Cities Service. In other words, the Cities Service does not pay any carrying charges or any line losses, if there be any.

Q. You acceded to that arrangement at the request of the office of Petroleum Administration for War?

A. Yes.

Q. I will hand you Exhibit No. 16, and ask you if that is a copy of letter you have confirming the arrangement with the Cities Service?

A. Yes, that is.

Mr. Foulston: It is very short. I would like to offer it in evidence as Exhibit No. 16.

Mr. Pruet: We object to it. The letter from the P. A. W. dated June 20, 1943, no doubt is a predicate to this letter.

Chairman Bond: Does that letter depend upon a former letter?

Mr. Foulston: I would like to read the letter. It is short.

Chairman Bond: Read the letter to the Commission.

Mr. Foulston: This letter is dated April 27, 1944.

(Headed Cities Service Gas Company, Bartlesville, Oklahoma, and addressed to Republic Natural Gas Company, Dallas, Texas).

[fol. 310] It reads:

> "In compliance with provisions of letter from Petroleum Administration for War, dated June 30, 1943, we have connected our Heisner #1 well, in Section 12, Township 4 North, Range 14 East, to your pipeline.

Deliveries from that well into your pipeline commenced April 20, 1944.

"In completing our 1944 program, our present lines will be extended so that the Heisner well can be connected directly into our system and disconnected from your pipeline. Until such time as we can tie it into our system, we would like to arrange to measure the gas delivered from this well into your pipeline and deduct the quantity so delivered from the quantities of gas measured by the meter or meters through which we receive gas purchased from you under contract of July 19, 1943.

"If this arrangement is satisfactory to you, will you please so indicate by having one copy of this letter signed and returned to us. Yours very truly, Cities Service Gas Company, by (S.) Alfred Hurlburt, Vice President. Copy—MS.".

Chairman Bond: Is that an answer to the Federal [fol. 311] Agency letter?

Mr. Foulston: No, it is not the answer. It is a letter that the Cities Service wrote to the Republic, and we accepted the arrangement.

Chairman Bond: Do you have a copy of the Federal letter?

By the Witness:

A. The letter was written to the Cities Service and that letter was written to us by the Cities service.

Chairman Bond: Do you have a copy of the Cities Service letter?

A. We do not have a copy. The Cities Service no doubt has. We saw the copy at that time.

Mr. Foulston: Mr. Pruet has asked the Cities Service to present that here.

Chairman Bond: The Commission will receive the letter with that understanding, that the letter from the Federal Agency will be made a part of the record.

By Mr. Foulston:

Q. Mr. Hurlburt, there were two wells that were mentioned—the Burge well and the Wheeler well. Where are they located?

A. The Burge and Wheeler wells are located in adjoining—let's see—the Wheeler well is located in 32-6-15, and the Burge well is in 20-6-16.

Q. The Republic Natural Gas Company has connected its gathering system to those wells, has it?

[fol. 312] A. Yes sir.

Q. At the time of that connection, who owned the wells?

A. Republic Natural Gas Company.

Q. And has continued to own the wells ever since?

A. Yes.

Mr. Pruet: We object to that. The contracts—assignments would be the best evidence. We move that the question and the answer be stricken.

Chairman Bond: The instruments are the best evidence.

Mr. Foulston: I think there are a number of cases holding that a person may show that he may own or does not own a piece of property. I don't know about the Oklahoma decisions, but it seems to me this should stand.

Chairman Bond: He doesn't raise the question of ownership.

By the Witness:

A. We owned the wells when we connected, yes sir.

Chairman Bond: The Commission didn't understand.

By Mr. Foulston:

Q. That brings me to the discussion of the Pioneer well and the Benedum-Trees well. Do you think you are qualified to testify to those transactions, or shall I?

A. I do. I saw all of the correspondence and was in most of the conferences leading up to what was done.

Q. All right. I will see if you can testify to it. Those [fol. 313] transactions emanated from certain conferences had in the office of the Petroleum Administration for War, Washington, D. C.?

Mr. Pruet: We object to counsel leading this witness.

Chairman Bond: Don't lead the witness.

By the Witness:

A. I will have to tell it in my own way. In Order M-68 we were obliged if we wanted to drill any wells in the State of Oklahoma or elsewhere—gas wells—to make an application to the Petroleum Administrator for War. We made an application, which application was made under my supervision, for eight wells. I cannot give you the exact location, at this time, of those wells. The application was refused. We then made another application to change the location of the wells and put them along side of this line so that there would be less pipe used. As I say, this matter is rather lengthy, but I will try to make it as short as possible. But that was refused unless we would connect four wells in Kansas with which we were not then connected, to give them a market——

By Mr. Foulston:

Q. Let's take the ownership of those wells.

A. The wells were—one of the Pioneer Petroleum Company, and three of the Benedum-Trees. After many conferences, we agreed that we would connect those wells free of charge and carry the gas free of charge provided that the [fol. 314] parties thereto—those who had those wells—would find a market, make a market with the Northern Natural Gas Company or anybody else our lines cross, so we could deliver to those. Further difficulties. And further provided that the Federal Power Commission would not use the conveying of this gas as a reason to put us in the class of a public utility——

Q. Do you mean a public utility or a natural gas company?

A. Or under the natural gas act, as a party could be regulated by the Federal Power Commission under the Natural Gas Act. I might be a little less technical in my language than counsel. We were very careful to do that. There was a great deal of expense before we got a satisfactory letter from the Federal Power Commission. We got that, and as a result thereof today the Pioneer Petroleum Company, on their Williams well in Section 12-35-38 is producing gas and selling it to the Northern Natural Gas Company, and we are transporting it free, for the duration of the war and sixty days thereafter.

Q. Who is absorbing the line loss?

A. The Republic Natural Gas Company.

Q. Who made the connection of the line extending to the well?

A. Republic Natural Gas Company.

Q. At whose expense?

A. At the expense of the Republic Natural Gas Company.

Q. The Republic Natural Gas Company agreed to extend [fol. 315] the line, cart the gas, and absorb the line loss without one cent of compensation?

A. That's right.

Q. Did the Republic make the same arrangement with the Federal Power Commission and the Petroleum Administration for War to similarly cart some gas for Benedum and Trees?

A. Yes sir—made the same agreement to take three wells, unconnected, Benedum and Trees and get them to the lines of the Republic for the duration of the War and sixty days thereafter.

Q. Was that matter, that it would not thereby be considered a Natural Gas Company, under the Act, by the Federal Power Commission, covered by a letter in that case?

A. They were covered in the same letter as the Pioneer.

Q. You have seen Exhibit One attached to the application in this case?

A. Yes.

Q. After the receopt of that letter, did you authorize me to make certain arrangements in connection with the well in Fourteen under a similar basis?

A. Yes.

Q. Was certain correspondence had with the Federal Power Commission and with the Office of Petroleum Administration for War, Assistant Director, Natural Gas and [fol. 316] Natural Gasoline Division, in the same connection?

A. Yes sir.

Q. I now call your attention to Exhibit No. 17, being a letter written by Mr. Leon M. Fuquay concerning the prospective connection for wells of the Peerless, the well in Section 14. Is that a copy of the letter which it purports to be?

A. Yes sir, it is. There is a slight difference between the requirements of this and the other.

Q. With reference to the question of the use of material to make the connection by the Republic if the Peerless would

obtain a market—do you have a letter from Mr. Robert W. Ducker, Assistant Director, Natural Gas and Natural Gasoline Division of the Petroleum Administration for War, Washington, 25, D. C.?

A. That is a copy of a letter we got from Mr. Ducker.

Q. So, Exhibits No. 17 and No. 18 were the tentative arrangements made with the two agencies, the Federal Power Commission and the Petroleum Administration for War, under which the Republic was willing to transport gas for the Peerless without charge to any customer they may have on your lines?

A. I note there is a difference between this and the grant in Kansas. In that, they give ninety days and up there they gave sixty days after the War.

[fol. 317] Q. The only difference in the two tentative arrangements between Ben-dum and Trees and the Pioneer Petroleum Company—for some reason the time was extended sixty days after the duration, and in the case of the Peerless they extended it ninety days after the duration?

A. Yes, and the conditions are the same, except the time extended is different.

Mr. Foulston: I desire to offer in evidence Exhibits No. 17 and No. 18.

Mr. Pruet: We object to those instruments for the reason they tend to prove or are introduced for the purpose of attempting to prove a compromise.

Mr. Foulston: No. I am not offering them for that purpose.

Mr. Pruet: That is all they could go for. That's what they prove.

Chairman Bond: You are offering them for the purpose of showing you were connecting at the request of a Federal Agency without any compensation?

Mr. Foulston: For the purpose of avoiding the very question that is here, as we have alleged in our answer.

Mr. Pruet: In connection with these letters, they were obtained in the course of an attempted compromise of this matter.

[fol. 318] Mr. Roulston: No, there was no action pending then.

Mr. Pruet: It was attempt to compromise—to avoid litigation.

Mr. Foulston: I am not offering them for that purpose.

I don't want to go into that unless they want to go into a discussion that was had along that line. Here is a letter from the Federal Power Commission affecting the very substance of this matter and stating the conditions upon which we could make a connection without being classified as a Natural Gas Company under the Act and having that used as a means of asserting jurisdiction over the Republic.

Mr. Pruet: In connection with an arrangement they made to transport gas for the purpose of showing they did not transport for hire, that would be relevant, but correspondence with reference to a connection that was never made, and gas that was never transported, I don't think has any bearing in this lawsuit.

Chairman Bond: The Commission will receive Exhibits No. 17 and 18. Exceptions allowed.

Mr. Foulston: I will read the date but not the heading and address. (Exhibit No. 18 is headed Petroleum Administration For War, Washington 25, addressed to Republic Natural Gas Company, Dallas, Texas.) "This letter is dated June 19, 1944, and reads as follows:

[fol. 319] 'We understand you have agreed to connect the Peerless Oil and Gas Company's well located in Section 14, Township 6 North, Range 15 East, Texas County, Oklahoma.

'This is to inform you that Petroleum Administrative Order No. 11 authorizes the connection of any well drilled prior to December 23, 1941, or drilled in conformance with orders issued by the Petroleum Administration for War, if the cost of material used in the well line does not exceed $5000 and if the line does not duplicate in whole or in part the transportation function or an existing line. If these conditions are not satisfied, an application for exception to P. A. O.—11 may be submitted covering such installation.

'Except as described herein, the connection of a gas well requires no further authority from the Petroleum Administration for War. Sincerely yours, (S.) Robert W. Ducker, Assistant Director, Natural Gas and Natural Gasoline Division.' "

Mr. Foulston: That was dated the 19th day of June, 1944. Now, Exhibit No. 17 was dated July 7, 1944. (Exhibit No. 17 is headed Federal Power Commission, Washington 25, [fol. 320] and addressed to Republic Natural Gas Company,

1505 Federal Street, Dallas, 1, Texas.) Exhibit No. 17 reads as follows:

"This is in response to your letter of June 16, 1944, requesting Commission assurance that the status of your company under the Natural Gas Act will not be affected by reason of your transporting natural gas for Peerless Oil and Gas Company in Texas County, Oklahoma, as more particularly described hereinafter.

"From available information, it appears that Peerless proposes to sell gas to Cities Service Gas Company from a well on Section 14, Township 6 North, Range 15 East, in Texas County, Oklahoma in part thru its own facilities and in part thru those of Republic. It further appears that Republic is to transport the gas some seven miles from Section 14, township 6 North, Range 15 East to the present interconnection between the Republic System and the Cities Service system located near the southwest corner of Section 6, township 5 North, Range 15 East, in Texas County, Oklahoma. In effect, you request Commission assurance that the status of your company under the Natural Gas Act will not be affected by the making of such arrangements or the performance thereunder during the present war [fol. 321] emergency.

"The Director, Natural Gas and Natural Gasoline Division, Petroleum Administration for War, has advised the Commission that the connection of this well will be in the interest of the war program and that his office will appreciate Commission consideration of the matter.

"Accordingly, this is to assure you that the Commission will not utilize the war emergency transaction herein specified as a basis for asserting jurisdiction over your company under the Natural Gas Act. This assurance is not to be construed as a determination of whether your company is a natural-gas company within the meaning of the Act, by reason of its present operations, apart from the proposed transaction as herein specified. This assurance is limited to the present war emergency, but not beyond 90 days after the cessation of hostilities, and is conditioned upon your reporting to the Commission on the fifth day of each month hereafter the amounts of gas so transported for Peerless Oil and Gas Company and delivered to Cities Service Gas Company, and any compensation you may receive therefore or in connection therewith.

"Copies of this letter are being sent to James E. Pew, Director, Natural Gas and Natural Gasoline Division, Petroleum Administration for War, Washington 25, D. C., [fol. 322] and to Vernon F. Taylor, President, Peerless Oil and Gas Company, Tionesta, Pennsylvania. Very truly yours, /a/ Leon M. Fuquay."

Chairman Bond: In the original request of the Government, was that oral or was it in writing?

Mr. Foulston: You mean, to the Petroleum Administration for War?

Chairman Bond: What was the cause of the request? What did they want to do with the gas? For what purpose did they want the gas? Did the Federal Agencies want to use the gas for some Federal Agency?

Mr. Foulston: No, the question came up as to whether or not the Republic—This was in June or July of this year—the other was in April or May. The question came up whether or not the Republic would treat Peerless on the same basis as Benedum and Trees, if they cared to make the same arrangement.

Chairman Bond: What the Commission has in mind is, what was the purpose of a Federal Agency asking for the transportation of gas. Was it to be transported for some Federal plant or for some other Federal purpose, or was it to protect the owners of the well?

Mr. Foulston: It was simply, theoretically, to avoid the use of more critical material.

[fol. 323] R. E. Foulston: Frankly Your Honor, you have asked me a frank question, the Federal Power Commission are over the Hougton Field from the burner tip down to the sands of the well.

Chairman Bond: Who is to be served, we take the critical materials if we take material to make connections.

R. E. Foulston: Well it would avoid taking this gas to some other location down to the Chemical Companies line or to other lines.

Chairman Bond: It is to save critical material, not distance of construction.

R. E. Foulston: That is right, that is the basis of the arrangements with the P. A. W.

Chairman Bond: The government don't use the gas?

R. E. Foulston: No.

Chairman Bond: The gas is not being used by the government?

A. R. E. Foulston: No.

Earl Pruet: Now your Honor, Mr. Foulston after this notice was given came to my office and said that he was very anxious to avoid a suit for damages and for drainage, of $500.00 per day and other damages and avoid this ques-
[fol. 324] tion being argued and he suggested that in order to make the arrangements, voluntary arrangements that he could work out a deal and get permission from Washington so they could transport gas to a commercial Cities Service line, he mentioned he could but would not take the gas because at the time they were in litigation with Republic and they said that they did not want to get the ill-will of the Republic.

R. E. Foulston: Now if we are going into that and I hoped we would not, I suppose I should make my statement as to that side of the question.

Chairman Bond: The Commission will recess for ten minutes.

Recess for ten minutes.

Chairman Bond: The Commission will be in session. You may proceed gentlemen.

R. E. Foulston: If your honor pleases, I started to reply to Mr. Pruet.

Chairman Bond: Very good.

[fol. 325] R. E. Foulston: I would not attempt to enter into a discussion. I discussed this matter with Mr. Taylor in Chicago and St. Louis and he is most cooperative and conscienteous and we talked together freely and frankly about the matter and I have one memo of twenty-five pages of my conference with him at that time. We tried to avoid controversies and I do not think that these matters should be discussed at this time and they should not be mentioned here. I doubt if the Commission would be interested in the conversation that I had with Mr. Pruet and Mr. Taylor.

Chairman Bond: The Commission will try to keep controversies down and have everything worked out if that is possible.

R. E. Foulston continues with the witness:

Q. Now Mr. Hurlburt, I want to ask you about the subject of acidization, have you had some experience with acid?

[fol. 326] A. Yes, we have got all told, as I say, 130 wells. I would say all but thirty of them or about, have been treated with acid.

Q. What is the amount of acid that you use generally in the treatment and completion of these wells?

A. As a matter of fact, we vary the amount of acid a great deal. In the wells that we originally drilled in Kansas we used about four thousand gallons. Most of the wells in Oklahoma that we have drilled within the last year have had ten thousand gallons. That doesn't apply however to all the wells just south of the state line,—some only had six thousand and I think we had two wells with twelve thousand.

Q. Are those involved in this exhibit No. 9?

A. No, not in Exhibit No. 9.

Q. That is all I care for that issue. Now, the next question is, what is your experience and what do you know about the effect of acidization upon the ability of a well to produce natural gas, in other words, how does it affect the natural flow of a well.

A. In general, the effect is to increase the open flow and the deliverability. The smaller the well is, the greater the effect of the acid seems to be. However, there is no absolute rule. The effect of acid is to increase the open flow from anywheres to one and a half to two times up to as much as ten times to the original open flow.

Q. And can you state with any degree of certainty [fol. 327] whether or not the use of acid either increases or diminishes the amount of reserves under a given tract of land?

A. The effect of acid has nothing to do with the amount of gas in place.

Q. Have anything to do with the life of the field?

A. The life of the field is dependent upon the reserves and the amount of gas taken out and the acid has therefore nothing to do with it.

Q. There is one question I omitted to ask you with reverence to the contractual relationship between Republic and Northern Natural, the contract exhibit No. 15 I think it is,

has been admitted in evidence. You do have another and further contract with Northern Natural, do you not?

A. We made a further supplemental contract with the Northern Natural whereby we agreed to sell the Northern Natural Gas Company any excess gas over the requirements of the contract, which was sixty per cent of their market, in what is known as, in the contractors Omaha district, at four cents, at a lower price.

Q. I don't know whether the Commission wants that. May I withdraw that part of the answer and say——

Chairman Bond: You may.

Mr. Foulston:

Q. (Continuing:) "at a price not determined by Exhibit No. 115."

A. Right.

Q. And if that matter of contract or the price element of this controversy ever becomes important, you want your [fol. 328] testimony to be understood that there is a contract of that nature out, is that right?

A. Yes sir.

Q. Have you, from your experience with this field, formed an opinion as to the probably life of the field?

A. Well, of course the life of the field will depend upon its present and additional market, but from all normal growth I should say we would have close to sixty to seventy years out there. I cannot say exactly.

Q. Is there any local market in the field except these carbon plants you have described, of any substantial amount?

A. There are the carbon plants; there are the few small towns and at Garden City there is a sugar beet plant that takes quite a lot of gas relatively for a short season of the year.

Q. Is that a large amount of gas in consideration of the total amount that is being produced?

A. No, sir.

Q. Generally, would you say that in order to find a market for this gas it must be taken to a distance?

A. Yes.

Q. Is the gas now being taken from the field by the various pipe line companies taken to distant markets, in the main?

A. Yes, sir.

Q. How distant are the nearest of those substantial markets.

A. Well, I should say that the nearest substantial market is somewheres near three hundred and fifty miles.

[fol. 329] Q. Now, in connection with the business of this company, you have had under negotiation from time to time, many discussions and contracts relating to additional markets in this field.

A. Yes, sir.

Q. Will you state briefly to the Commission how markets are obtained and what commitments are required on behalf of the producers who obtain those markets, generally speaking, how the matter is handled.

A. Well, you usually have to go out and hunt up the prospective markets, for instance, I might say that there are lately, relatively lately, there has been three or four different prospective markets. One of them has been the Chicago market. Nothing has really come out of it although we have done a great deal of negotiating. We actually wrote and had a signed contract with the Hope Natural Gas Company to sell gas to a pipe line that was to go to somewheres in West Virginia. Finally the contract failed because the Hope couldn't get a permit from the Federal Power Commission. We also wrote a contract and all the terms of it was agreed to, with the Consolidated Gas Company. We went out and negotiated with them. That has not been done. I saw something about a hearing to be held on that before the Federal Power Commission, but I don't know.

Q. And are there other prospective markets that may in time be reached by pipe lines extending from this gas reserve?

A. Oh, yes.

Q. Now, in order to develop a market must there be a [fol. 330] commitment to the people who are going to use the gas?

A. I think it is absolutely impossible to make a contract without making commitments that you will dedicate acreage and drill wells under certain conditions of pressures and demand and that you will dedicate those for the life of the field.

Q. Is there any usual and customary basis of the amount of dedication required in acreage?

A. Well, the dedication has been from twelve hundred and eighty to fifteen hundred acres per million feet of gas required, per day.

Q. Therefore, the producer who supplies such markets is required under these arrangements to dedicate twelve hundred and eighty to fifteen hundred acres which he will set apart, with facilities, for the supplying of these markets for the life of the field, is that right?

A. That is right. In other words, if you are going to sell three hundred and sixty-five million, you must have twelve hundred and eighty to fifteen hundred acres dedicated.

Q. To each million.

A. That is for the market for the year, that is a million feet a day, it is the average.

Q. There has been talk of other markets such as the nature of industries in the field.

A. There has been some talk of industry in the field.

Q. Gasoline plants and so forth.

[fol. 331] A. There has been much talk of gasoline plants but there has nothing materialized. I think that is a chemical problem that is going to take a good many years to go on.

Q. At this time do you know of any means or places where one might obtain a market for a substantial amount of gas that you might produce, except upon a substantial amount of gas for the life of the field?

A. No, except pipe lines who are already in the field buy gas. They want to buy it for life,—they will insist upon that—all of them do and they buy it at a price, taking into consideration these other things.

Q. Finish your answer on that other matter.

A. Well, the pipe line will buy gas from individual wells but have always insisted for the life of the field and at a lower average price than they pay—long term contracts.

Q. In other words, the acreage dedicated, the cost of procuring facilities, the term of the contract, all affect the conditions upon which these contracts are made, is that right?

A. Yes.

Q. Now, you have testified that there are on your gathering system, within three miles, more than two hundred possible locations upon which wells might be drilled and become productive. Taking into account your past experience with your allowables with the Kansas Commission and the probable allowables under the basic order of prora-

tion adopted by this Commission in April, 1943, have you an idea how much capacity of the pipe line would — left for [fol. 332] Republic if you took the allowables from two hundred wells that might be connected into your gathering system or what effect generally such connections would have?

A. Where is this gas going to be sold?

Q. I am assuming now you may be required to connect with all people within three miles who had wells.

A. It would reduce the take from every well we have got connected and if you connect three hundred wells and we have now two hundred wells—and we have not got 130, we would get little more than one-third of what we are now getting.

Q. Would that be sufficient to warrant the maintenance of the business, or would it not.

A. I don't think it would. I would have to do a good deal of calculating.

Q. That is an economical matter that hasn't been contemplated, is that right?

A. That is right.

Q. I think you may cross-examine.

Cross-examination.

By Mr. Pruet:

Q. I believe you testified here something over a year ago in the hearing on the Hugoton order, that you had 92 wells in Kansas at that time, is that right?

A. I think so.

Q. Is that the same number of wells you still, at this time, have in Kansas?

A. We have drilled—last month we have drilled two wells [fol. 333] that are not connected yet.

Q. In Kansas?

A. Yes, sir.

Q. So you now have 96 wells.

A. But they are not finished. We haven't got any wells finished.

Q. How many wells do you have finished and connected in Kansas?

A. Ninety-two of them.

Q. There have been two more drilled that aren't completed.

A. They are not completed, they are drilling.

Q. They are in the process of drilling.

A. Yes, sir.

Q. How many wells at that time, back when you testified before this commission, did you have in Oklahoma?

A. Well, I couldn't say.

Q. How many do you have now?

A. I think we have got about thirty-seven. We are drilling wells there and completing one every now and then. I can't give you the exact number.

Q. This contract that has been introduced as Exhibit 15, the Republic was not a party to that contract originally, was it?

A. The Republic was not in existence at that time, the original contract—neither was the Northern Natural Gas Company as the Northern Natural Gas Company.

Q. The original contract was between the Missouri Valley Gas Company or Argus Production Company and who else. [fol. 334] A. The contract—the original contract was between the Missouri Valley Gas Company and the Missouri Valley Pipe Line Company and there is, also in order to carry that contract out, a contract between the Argus Production Company and the Missouri Valley Gas Company and the Missouri Valley Pipe Line Company.

Q. Then there were three parties to the original contract.

A. That is right.

Q. How many parties are there and who are the parties to the contract as it is now constituted?

A. The Northern Natural Gas Company and the Republic Natural Gas Company.

Q. Does the Northern Gas and Pipe Line Company have the right to come in and drill wells on your leases now under the contract as it now is?

A. No.

Q. The right which Argus had, which as I remember, had, under the original contract.

A. No.

Q. Did I understand you or your counsel on-e, to say, you dont use the public highways for your pipe lines?

A. I didn't understand the counsel to say that. I said, we laid—I understood he said, we laid pipe lines on private property and that there were some lines laid on public highways but very few on public highways.

Q. Do you know whether or not the Republic Natural Gas [fol. 335] Company has ever made application to the Board of County Commissioners of Texas County, Oklahoma, for the right to lay a pipe line on the highways in that county?

A. I know we lately got a permit to lay a pipe line for a short distance on a county road. I wouldn't call it a highway hardly, but it was in this county road.

Q. Of course out there in the short grass we don't have as good roads as you fellows up in Kansas.

A. Too bad about your living here.

Q. I hand you what has been marked for the purpose of identification Exhibits 19 and 20, I will ask you to state if you know what they are, that is, what they are copies of.

Mr. Foulston: I have no objection to the introduction if you wish to offer them in evidence.

Mr. Pruet: We wish to offer them in evidence.

Chairman Bond: Received.

Mr. Pruet:

Q. This is the application——

Mr. Foulston: We *have alread* it be admitted, unless Mr. Pruet wants to ask a question about them.

Mr. Pruet: It is in evidence.

Whereupon Exhibits Nos. 19 and 20, so offered and admitted in evidence, are in words, letters and figures as follows:

[fol. 336] EXHIBIT No. 19

Before the Honorable Board of County Commissioners of Texas County, Oklahoma

In the Matter of the Application of REPUBLIC NATURAL GAS COMPANY for Authority to Use a Portion of Said Public Roads in Texas County, Oklahoma

PETITION

Comes now Republic Gas Company, Petitioner, and shows to this Honorable Board that it is a corporation, organized and existing under and by virtue of the laws of the State of Delaware and is duly authorized to transact business in the State of Oklahoma as a foreign Corporation.

Your petitioner further shows that it desires to lay and construct a four and a half inch and a 8⅝-inch gas line, on and along the certain county road in Advance Township of Texas County, Oklahoma, as follows: beginning at a point on the west line of the Southwest quarter of Section 17, Township 6 North, Range 15, ECM, which point is approximately 200 feet north of the southwest corner of said southwest quarter of Section 17, township 6 North, Range 15, thence in a southwesterly direction at a 45-degree angle, a distance of 79 feet to the point or right-of-way lying between section 17 and 18, which point is approximately 153 feet north of the north line of section 19, Township 6 North, Range 15; thence due south a distance of approximately [fol. 337] 2993 feet at a point which is approximately 200 feet south of the north line of the southeast quarter of Section 18, Township 6 North, Range 15; thence in a southwesterly direction a distance of 14 feet at an angle of 45 degrees, to a point in the east line of the southeast quarter of Section 19, Township 6 North, Range 15, which point is approximately 210 feet south of the northeast corner of the southeast quarter of Section 19, Township 6 North, Range 15. For further particulars reference is hereby made to Exhibit A, attached hereto, which said line is to be used for the purpose of transporting natural gas from certain of petitioner's natural gas wells.

Petitioner further represents and states that if granted authority to construct, operate and maintain its pipe line on and along said road, petitioner will in all things conform and abide by the rules and regulations of this honorable body. With reference to the use of said public road for said purposes as well as those of the county employees, employed or appointed by your Honorable Body for the purpose of superintending and laying thereof, said petitioner will lay said line so as to be constructed in accordance with the wishes and rules of this Board and of the county employees having supervision thereof; that it will, in all things protect and save harmless said Board of County Commissioners and the County of Texas, State of Oklahoma from any cost, charge or expense by reason of the laying of said line and that said line will be so constructed as not to inconvenience, endanger or obstruct public travel along said road.

[fol. 338] Wherefore, your petitioner prays that your Honorable Board enter an Order herein, authorizing peti-

tioner to use and occupy the portion of said road hereinabove set out and described at the approximate location shown and set out in the plot attached to this petition, which has heretofore been designated Exhibit "A" and made a part of this petition.

Dated this 7th day of August, A. D. 1944.

Republic Natural Gas Company. It's Attorneys.

EXHIBIT No. 20

Before the Honorable Board of County Commissioners of Texas County, Oklahoma

In the Matter of the Application of REPUBLIC NATURAL GAS COMPANY for Authority to Use a Portion of Said Public Roads in Texas County, Oklahoma

This cause coming on to be heard upon the petition of Republic Natural Gas Company hereinafter referred to as Petitioner, and the Board being fully advised in the premises, finds that petitioner is a corporation of the State of Delaware, duly authorized to do business in the State of Oklahoma as a foreign corporation.

The Board further finds that it is necessary for petitioner to lay, construct and operate a pipe line on and along a [fol. 339] certain road situated in Advance Township of Texas County, state of Oklahoma, as set forth in Petitioner's application filed herein.

Therefore, it is hereby ordered that, subject to the conditions hereinafter set forth, said petitioner, Republic Natural Gas Company is hereby granted permission and authority to construct and maintain a 4½-inch and 8⅝-inch pipe line on and along the county road, at the location shown and set forth in the application of petitioner herein, which said application is hereby made a part of this order as fully as if set out at length herein; provided, however, after the laying of said line on and along aforesaid road petitioner shall immediately reconstruct those portions of the road along which said pipe line is laid and constructed so that the same shall be kept and maintained for public travel in equally as good condition as other portions of said road. In the event petitioner moves said pipe line from said road, said petitioner shall replace and recondi-

tion said road in substantially the same condition as before removed. All liability of petitioner for reconditioning of said road after such remocal shall cease upon approval of the Board of County Commissioners of their representatives; provided, however, that the petitioner shall, at all times, keep the cave-ins on said lands properly filled; provided, further, that construction or laying of said pipe line by petitioner herein, under this order shall be considered and shall constitute an acceptance of this order and all of the terms and conditions hereinafter set forth.

[fol. 340] Dated this 7th day of August, A. D. 1944.

Board of County Commissioners, Texas County, Oklahoma. (Signed) C. O. Wilkinson, Chairman; Kay L. Thompson, C. E. Beaman, Members.

Attested: Bessie Stice, County Clerk.

Mr. Pruet:

Q. Now, as to the wells in section 12-35-38, which is the Pioneer well and the Cities Service Burge in Section 20, Township 6 North, Range 16, do you have the written request that you say that the Petroleum Administrator made to you requesting you to take the gas from those two wells?

A. From which two wells?

Q. Pioneer well #1, located in 12-35-38 and the Benedum-Trees. Well, I mean.

A. I don't know whether we have that with us or not.

Q. You have testified that that arrangement was made at the request of the Petroleum Administrator for War.

A. Yes, sir.

Q. If you would, I would appreciate it, if you would procure for us, produce for the Commission, the request by that officer that you connect your line with those wells, would you be willing to do that?

[fol. 341] A. Well, that is a pretty long lot of papers, but I guess we can get them for you if you want them. It's an awfully lot of correspondence in there.

Mr. Foulston: Mr. Pruet, either you are not asking exactly what you want or what you ask for do not exist in that form. If you want the exchange of correspondence on the subject we will be glad to get that for you.

Mr. Pruet: My understanding was, the reason you did this was at the request of the Petroleum Administrator for War.

Mr. Foulston: Mr. Hurlburt will have to testify on that, which I will have him to do after a bit.

A. As I say, it came from them because we made an application to drill wells. Now, for instance, when you ask for this question—that application is a very extensive and a very involved application, containing a number of maps about the size of the volume lying before the Judge here and I cannot see the need of that. Now, out of that, we finally got an order saying we could drill these wells provided we connected with the Benedum-Trees and the Pioneer, and that is the way the request came. It was not exactly a request. If we wanted to drill wells in Oklahoma, we had to do it.

Mr. Foulston: There wasn't any request about it.

A. That's it. So I might have used the word wrong and I don't care to make up 12 or 13 copies of that report. That [fol. 342] is what he is asking for.

Mr. Pruet.

Q. Now, you spoke of the contract by virtue of which you are now selling gas to the Cities Service as a temporary arrangement that arose out of the war emergency, the contract however does not terminate with the termination of the war.

A. We are not selling any gas to the Cities Service. You mean the general big contract?

Q. That's what I'm talking about.

A. Alright, I get it.

Q. That contract doesn't terminate with the war, does it?

A. It speaks for itself. The counsel wrote that termination.

Q. It does say, it can continue for a period of twenty years.

Mr. Foulston: Unless terminated.

A. I say, there is the contract. Certainly it was the intent we were going to write——

Mr. Foulston: I want to object to that question, because Mr. Hurlburt declared he was not a lawyer, with a good deal of pride—and it is a legal question.

Chairman Bond: The contract is the best evidence.

Mr. Pruet: He spoke of it as a temporary contract.

Chairman Bond: You may read the terms of the contract and ask him if it is temporary,—read the terms of that provision and ask him.

Mr. Pruet:

Q. Is the Hugoton field and are the wells shown on that [fol. 343] map there, within the red line drawn by Mr. Capshaw, are they drilled into and producing out of a common source of supply?

A. I would hate to swear, but I think they are. I think that they perhaps were not originally, because I think you have got conditions that indicate that there is a great deal in the quality of gas in spots and in its heating value and constituents by analysis, but since these wells have been drilled in you got 500 wells drilled through there that the well bores have tied them together, if they weren't before.

Q. Now, those wells that are shown on the small map that Mr. Ellison identified, then they too are drilled into, with the exception of the Peerless well, are producing from the same common source of supply.

A. I think so,—pretty close.

Q. Of course the Peerless well is not producing but they are drilling in the——

A. It produced as much gas in the last three months as the other wells have, in my judgment. It isn't producing now.

Q. Now, under your contract with your lessees, you agree to pay them one-eighth of the proceeds derived from the sale of gas, under that agreement, don't you? That counsel read to you.

A. We pay royalty according to the lease.

Mr. Foulston: I want to object to the question asking the witness a conclusion concerning the effect of that 4th [fol. 344] paragraph or 88 oil and gas lease, which is a matter for the Commission I assume.

Chairman Bond: You may ask the witness what his understanding is of the provision of the contract, if you want to give him a legal question.

Mr. Pruet.

Q. Do you pay to your royalty owners one-eighth of the proceeds derived from the sale of gas?

A. We pay to the royalty owners one-eighth of five cents as a royalty for gas.

Q. What do you receive from the gas on which you pay one-eighth of five cents to your royalty owners, from the Northern Natural Gas Company.

A. We get, some of it six cents, some of it four cents.

Q. And on what basis do you pay gross production tax to the State of Oklahoma?

A. On the basis on which we pay royalties, which I believe is—no, I am not certain about that. I won't commit myself because I am a little uncertain. I don't take care of all tax matters.

Q. As a matter of fact, don't you pay on the basis of four cents?

A. I'm not certain.

Q. Do you know who would be certain in your company?

A. Yes, I know who. The fellow who makes up the tax reports.

Q. Would you have any objection to having your returns [fol. 345] produced here, returns filed with the Tax Commission of Oklahoma?

A. Well, I think you got them right here. I haven't any objection to it.

Q. As a matter of fact, the same man drilled your wells offsetting the Peerless well drilled the Peerless well.

A. I don't know.

Q. You don't know who drilled that?

A. No, sir.

Q. They were acidized and blown too, weren't they?

A. Yes, sir.

Q. Same way with all of them, same way that the Peerless well was acidized and blown.

A. Oh those wells were drilled before the Peerless were drilled.

Q. And they produced for a number of years.

A. Yes.

Q. Before the Peerless well was drilled.

A. Yes, sir.

Q. And are still producing at this time.

A. Yes, sir.

Q. From the same common source of supply into which the Peerless well is drilled.

A. Yes.

Mr. Foulston: I object, calling for a legal conclusion.

Mr. Pruet: I withdraw it.

[fol. 346] Mr. Pruet

Q. With reference to the Pioneer well and the Benedum-Trees well about which you have testified,—when the Northern Natural Gas Company took that gas did it reduce its agreed take from you or did it take from those wells in addition to what it was taking from your company?

A. I didn't know what the effect is going to be. They are going to take our contract amount of gas.

[fol. 347] Q. Mr. Hurlburt, do you know whether they took from these other people in addition to the agreement—in addition to the agreed amount they were to take from you, or did you reduce your amount of gas sold to them, to that extent?

A. We agreed to transport it. We have not changed our contract requirements with the Northern Natural Gas Company. They are required to buy the amount of gas called for in this contract.

Q. I will ask you if at the time of the hearing on the Hugoton order, when you testified as a witness, if you didn't testify as follows:

"Q. Is this fair, if it is not fair you do not have to answer, do you pay the royalty owner five cents, is that the price that you sell it to the Norther Natural at.

"A. We do not pay the royalty owners 5 cents we pay him ⅛ of five cents for all the gas we take from his wells."

Was that question asked and did you make that answer?

A. I don't know whether that has been copied right or not. We pay him as per the lease. We pay him as royalty for gas one eighth of five cents.

Q. Is that statement correct that I have just read to you; whether or not you so testified, is that correct?

[fol. 348] A. I say we pay him one eighth of five cents for all the gas that is taken, as royalty.

Q. I will ask you further, if this further question wasn't asked you, and if this answer was made by you:

Q. Do you sell it at the same rate to the other company, the Northern Natural Gas Company.

A. We charge six cents for that, the extra cent is for gathering it."

A. I guess I did.

Q. I will ask you if this further question wasn't asked you, and if this answer wasn't made by you?

By Mr. Foulston:

Q. It is the usual provision of the lease on royalty is it not. It is turned into the pipeline ⅛ paid on his gas produced from the well, is that right.

A. That is the lease; that is what we do."

Is that correct?

A. I think that is what we were doing in Kansas.

Q. I will ask you if at that time this question wasn't asked you and if you didn't make this answer:

"Q. By Commissioner Armstrong: Does the Republic Gas Company pay these royalty owners each month or does the Northern Natural pay it.

A. We pay it."

A. That is right.

[fol. 349] Q. I will ask you if Commissioner Armstrong didn't ask you this further question, and if you didn't make this further answer:

"Q. It has always been the understanding between your Company and the representatives of the Corporation Commission as you moved into Oklahoma, that there was a ratable taking law in this state?

"A. Yes."

A. Yes sir.

Mr. Pruet: That is all at this time.

Redirect examination of Mr. Alfred Hurlburt.

By Mr. Foulston:

Q. Since the matter of price has been gone into, can you tell, without a lot of figuring, whether or not over the

period of time of all your existing contracts, you will be selling gas at exactly five cents?

A. I think we will be selling it just a little above five cents.

Q. It would depend upon how much four cent gas and six cent gas you sold and what other gas you sold?

A. That's right.

Q. Regardless of any other consideration of pride in the field, your policy has been to pay your royalty holders [fol. 350] on the basis of five cents per thousand and send the checks to your royalty holders as per your contracts, and you have had no one refuse?

A. That's right.

Q. And you have had no trouble?

A. No—whether we well gas for four cents or what——

Q. In other words, you are selling considerable gas at four cents, and you are paying the royalty owners five cents?

A. Yes.

Q. And you are selling some at six cents, that you are paying five cents on?

A. That's right.

Q. Calling your attention to Exhibit No. 21 which is a plat of the portion of the Section shown in the territory of Section 14 in question in this case, and on the plat is a red coloring covering the leases—and leases held by production.

A. That's right.

Q. State whether or not the Republic, by leases held by delayed rentals or production, possess the right to drill into and produce natural gas from all of the lands shown in Exhibit No. 21.

A. The Republic Natural Gas Company either has production on, or has the right to drill on all of the leases shown in red, as well as those that are marked by the Republic on this map which is not shown. This map was made [fol. 351] to show the area immedintely around there was held by the leases of the Republic. There are other leases of the Republic marked.

Q. How close to this pipeline lying in the sough portion of Section Fourteen, and how near to Section Fourteen, does the Republic have an unconnected well at this time?

A. The Republic has an unconnected well on the Kenoyer, half a mile from the pipeline south of it.

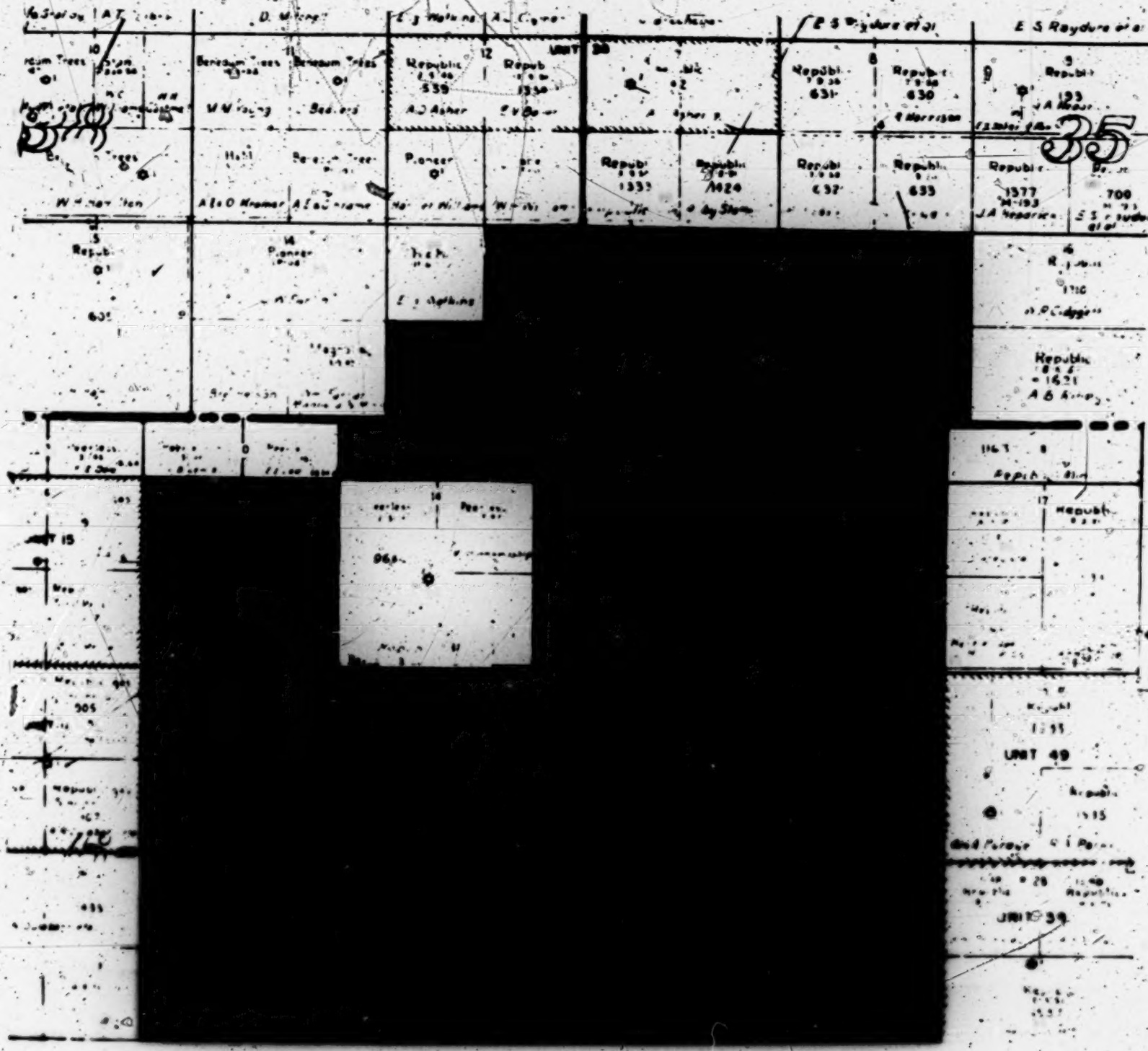
Mr. Foulston: We offer in evidence Exhibit No. 21.

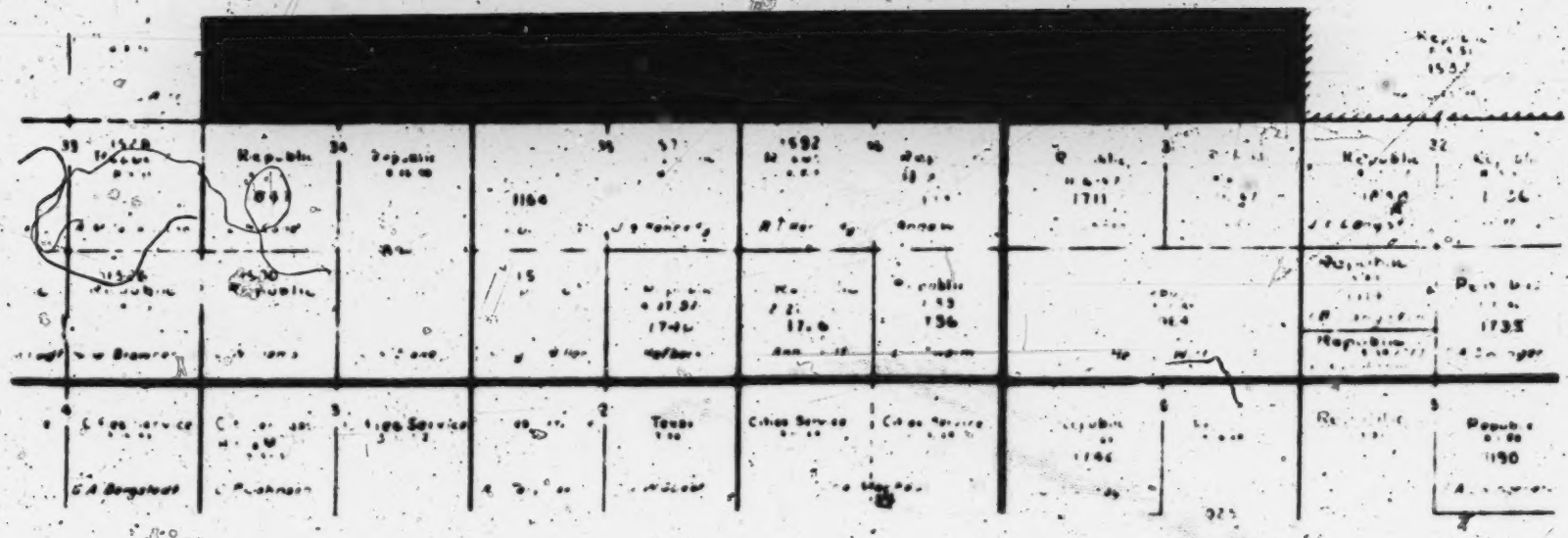
Chairman Bond: Received.

Exhibit No. 21 is in words, letters and figures as follows, to-wit:

(Here follows 1 photolithograph, side folio 352)

EXHIBIT NO. 21





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[fols. 353-365] Mr. Foulston: That is all.

Further cross examination of Mr. Alfred Hurlburt by Mr. Pruet:

Q. What Section did you say that unconnected well was in?

A. The Kenoyer well——

Q. This Section here—that's in Section 19. Is that right? That well has been completed?

A. Yes, it has.

Q. When did you complete it?

A. About three weeks ago.

Q. Have you treated it with acid and blown it, as usual?

A. No, I don't think that has been treated.

Q. Do you know who drilled the well in?

A. Who drilled it in?

Q. Yes.

A. I don't know whether Moran Brothers or Clay Brothers—I cannot remember.

Q. Has the log been filed with the Corporation Commission—the log on the well?

A. That—I am not certain yet.

Q. It hasn't been completed very long?

A. No. I said, about three weeks ago.

Q. Now, this market you talk about haveing been gotten. The Northern Natural is the one that got that market, wasn't it?

A. ——.

Q. Didn't they get the market?

A. We got our market from the Northern Natural Gas Company.

Q. They had to get their market from somebody, didn't they?

[fol. 366] A. Yes, they had to get their market, and if you want that history, it is a long one. In order to get that market—it is a very long tale, and it cost a lot of money, and it broke C. D. Seagraves, the owner of that property. He went to get that market and finally made a contract with the Northern Natural. He spent a lot of money to get that contract. He bought all of the pipe from Hugoton to Omaha, Nebraska, and——

Q. The Republic wasn't in existence at that time?

A. No, I understand, but it was a part of the cost of this Company's business today.

Q. The market had been procured and the contract was entered into before the Republic came into existence?

A. It was before we bought it, but it was a part of the cost of getting it.

Mr. Pruet: That is all.

Fu-ther redirect examination of Mr. Alfred Hurlburt by Mr. Foulston:

Q. Your predecessors in interest—Missouri Valley Pipeline Company, heretofore referred to, as the Missouri Valley Gas Company; and the Argus Production Company, because of their effort to build this gathering system and drill these wells, went broke. Is that right?

A. That's right.

Q. And that is the basis upon which they finally went thru Bankruptcy, and the Republic finally was emerged?

A. That's right.

[fol. 367] Q. And the relaying of the pipeline which is shown in the heavy black line on Exhibit No. 9. That is a 12 inch line?

A. Yes.

Q. Why did you take up the eight inch line and lay the twelve inch line?

A. Because the eight inch line would not carry it—Let me go back and give you some history——

Q. That is what I want.

A. We had drilled, or rather our pre-cessors had drilled most of these wells in Kansas. We didn't anticipate we would get as much gas, so we laid an eight inch line, but we found that in order to get that gas out we would have to have a bigger line——

Q. All right, Mr. Hurlburt, and constantly you——

A. I might also say that since that time—the laying of that line—we have been able to acquire considerable acreage and drilled in there. We didn't know and did not expect to know——

Q. Let me ask you here, whether or not in the enlargement of your system you had any conferences with the War Production Board with reference to enlarging your line so you could transport your gas?

A. Yes sir, we made several trips to Washington.

Q. In any of those enlargements of your gathering system, have you contemplated carrying any gas commercially for others along the lines of your company?

A. We have not.

Mr. Foulston: That is all.

[fol. 368] Mr. Pruet: You asked about some leases. There are two leases. One lease covers the northeast quarter of Section Fourteen, Township Six North, Range Fifteen East C. M., Texas County, Oklahoma, and is dated November 13, 1937, and was executed by J. V. Blankenship, Cuba A. Blankenship and Annie M. Cuthbert in favor of W. E. Benson, and was later assigned to the Peerless Oil and Gas Company. The other one is the lease which covers the West Half and the Southeast Quarter of Section Fourteen, Township Six North, Range Fifteen East of the Cimarron Meridian, in Texas County, Oklahoma, and is dated December 31, 1936, for a period of ten years, and was executed by the Central Life Assurance Society (Mutual) in favor of W. E. Benson, and the lease was thereafter assigned to the Peerless Oil and Gas Company, and the Republic purchased the minerals after that lease was on record.

Mr. Foulston: Will you give us the date of the assignments, please?

Mr. Pruet: I don't think I have but one of the assignments. The lease covering the West Half and the Southeast Quarter of Section Fourteen, Township Six North, Range Fifteen East of the Cimarron Meridian, was by W. E. Benson assigned to the Peerless Oil and Gas Company under date of December 31, 1936, apparently the date it was acquired, but I do not have the other assignment.

Mr. Foulston: And it was recorded?

Mr. Pruet: I have your mineral deed if you want that.

Mr. Foulston: All right, so we may have the date in it.

[fol. 369] Mr. Pruet: It is dated the 24th day of April, 1942 subject to existing oil and gas leases. The mineral deed was dated the 24th day of April, 1942 and executed by P. H. Crump in favor of the Republic Natural Gas Company covering the minerals in the WestHalf of Section 14, and the Southeast Quarter of Section 14.

Commissioner Armstrong: Is that the minerals?

Mr. Pruet: Yes, it covers all of the minerals in the West pany covering the minerals in the West-Half of Section 14, subject to the lease.

By Mr. Foulston:

Q. Mr. Hurlburt, are you acquainted with P: H. Crump?
A. I am.

Q. Do you know whether or not at the time, and for some time prior to the execution of the deed referred to, she was Holding title to that land for the benefit of the Republic Natural Gas Company?

A. For quite some time, several years ahead of that.

Q. You had an unrecorded deed from her to the land, did you not?

A. Yes.

By Mr. Pruet:

Q. She acquired any interest she had in this property subsequent to the time the Central Life Assurance Society executed that deed, did she?

A. Whatever interest she had, before she transferred her interest to the Republic Natural Gas Company, she acquired subsequent to the Central Life Assurance Society's executing what? I didn't get your question.

[fol. 370] Q. She acquired it from them subsequent to the time they executed this lease?

A. Yes, I couldn't get your question.

Q. As a matter of fact, P. H. Crump,—isn't she a stenographer with your Company?

A. ——?

Q. Who is she, do you know?

A. She is a lady in, at Wichita.

Q. Who does she work for?

A. She works for Mr. Foulston.

Q. Do you know why you carried this ownership in her name for several years?

A. I don't know.

Q. Do you suppose Mr. Foulston would know?

A. Well, he might.

Mr. Puret: That is all.

Further redirect examination of Mr. Alfred Hurlhurt.

By Mr. Foulston:

Q. As a matter of fact, Mr. Hurlburt, you instructed me to buy fifteen thousand acres of land, didn't you?

A. As a matter of fact we decided it was a wise policy to buy fifteen or twenty thousand acres of land in Kansas and Oklahoma at the price then existing, and the wise thing to do was to buy it in an individual's name. Why it was kept just that long before being transferred, I don't know.

Q. Don't you know you had a legal opinion that there was some question whether the company could hold title to the surface?

A. Yes.

[fol. 371] Q. And therefore the title to the surface was sold?

A. Yes, we would sell titles to all the surface.

Q. And the minerals were deeded to the Republic Natural Gas Company?

A. Yes.

Q. That was true in Oklahoma and in Kansas?

A. Yes.

Q. The land was bought on the open market at the prices being offered at that time?

A. That's right.

Mr. Foulston: That is all.

Mr. Pruet: We now offer in evidence Exhibit No. 22, consisting of five photostatic copies of letters.

Mr. Foulston: No objection except as to competency and materiality.

Chairman Bond: Received.

(Said Exhibit 22, consisting of a photostatic copy of five letters respectively, is in words, letters and figures as follows, to-wit:

[fol. 372] EXHIBIT No. 22 CONSISTING OF FIVE PHOTO COPIES OF LETTERS

November 23, 1942.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas

re: OKL-167

GENTLEMEN:

We understand that you are the owners of the fee and all the minerals under 480 acres in Section 14, Township 6-North, Range 15-East, Texas County, Oklahoma, on which Section we own two oil and gas leases. We should like to re-write these leases on these 640 acres consolidation form, or in lieu of that, we ask that you agree to consolidate your lease with the other lease in this Section. It is our understanding that the Federal Government will only permit wells to be drilled on 640 acre units, in order to save as much steel as possible for the War effort. For this reason, we request your agreement to consolidate the leases in this Section so that we can drill a well on it. Yours very truly,

Peerless Oil and Gas Company. By Thornton Davis.

TD/c.

[fol. 373] REPUBLIC NATURAL GAS COMPANY

1505 Federal Street

Dallas, Texas

November 24, 1942.

Mr. Thornton Davis, Peerless Oil and Gas Company, Alamo National Building, San Antonio, Texas.

DEAR SIR:

Receipt is acknowledged of your letter of November 23 with reference to unitizing lands in Section 14-6-15, Texas County, Oklahoma.

Under date of September 3, 1942, the War Production Board issued Supplement #6 to Order M-68, which prohibits any further drilling in the Hugoton Field. Therefore, it would appear that a consolidation of acreage at this time would be quite premature.

Yours very truly, R. J. Wallace, Vice-President.

[fol. 374] November 25, 1942.

Mr. R. J. Wallace, Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas

DEAR MR. WALLACE:

I have your letter of November 24th with reference to the consolidation of certain leases in Section 14-5N-15E, Texas County, Oklahoma.

Obviously there will be no further immediated drilling in the Hugoton Field, and we had no such thought in mind when we wrote you. However, we are looking to the future in this connection, and would like to have you advise us whether or not you will agree to consolidate these leases at the present time, in order that we may make our future plans accordingly.

Yours very truly, Peerless Oil and Gas Company.
By Thornton Davis, Vice-President.

TD/c

[fol. 375] Republic Natural Gas Company
1505 Federal Street
Dallas, Texas

November 28, 1942.

Mr. Thornton Davis, Vice-President, Peerless Oil and Gas Company, Alamo National Building, San Antonio, Texas.

DEAR MR. DAVIS:

Mr. Wallace is out of town at the present time, so I am answering your letter addressed to him under date of November 25, 1942.

I would say that we would not care at the present time to make a unit agreement on the property mentioned, but when the time comes that you wish to drill, the matter will be taken up again.

Yours very truly, Alfred Hurlburt.

AH/bjc

[fol. 376] November 30, 1942. Okl 167

Mr. Alfred Hurlburt, Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

DEAR MR. HURLBURT:

Your letter of November 28 to Mr. Davis has just been received. Mr. Davis is out of town, so I am replying to this myself.

I had requested Mr. Davis to proceed with the consolidation of our leases there and to do so immediately. Naturally, we cannot follow each one of these up again and again, as time does not permit. I regret very much your unwillingness to consolidate this property, and we will not bother you further regarding it.

Most sincerely, Vernon F. Taylor.

VFT/ebe

[fol. 377] Thereupon discussion was had off the record.

By Mr. Foulston:

Q. Mr. Hurlburt, you were asked about the minerals underlying three quarters in Section Fourteen. Is it ture that under the same circumstances, the Republic acquired the minerals to three quarters lying immediately north of the quarter section; being three quarters in Section 13-35-Range. 38, Stephens County, Kansas? Whether or not under the same conditions and at about the same time, you acquired the minerals embodied in Mr. Pruet's question, did you acquire these quarters in there?

A. We did.

Q. And that was true about considerable of that territory?

A. Yes, I could not, without a great deal of effort, just exactly say what pieces we bought but we bought in the neighborhood of fifteen or twenty thousand acres.

Q. And the minerals acquired by the Republic, adjoining the Northwest quarter of 18-35-19?

A. Yes.

Commissioner Armstrong: Have these leases been unitized in Section Fourteen?

A. They have not.

[fol. 378] Mr. Pruet: Except by order of the Commission. These are the letters by which we tried to have them unitized. These letters I have offered as Exhibit No. 22 constitute the correspondence between the Peerless Oil and Gas Company and the Republic Natural Gas Company in which we attempted to effect a voluntary unitization of the mineral interests in that Section prior to the time we ever started to drill a well.

Mr. Foulston: We have no objection to this, but I want to ask Mr. Hurlburt some questions about the matter.

By Mr. Foulston:

Q. Mr. Hurlburt, there was some correspondence between you and Mr. Davis as to whether or not the Republic would unitize the three quarters they had with the quarter otherwise owned in that Section. Is that right?

A. There was some correspondence about it. I have forgotten the details.

Q. You were advised at that time the Peerless was going to divide your markets and divide with them?

A. Yes.

Q. And that is the reason you didn't want to do it?

A. Yes.

Q. You have unitized in many other cases?

A. Yes.

[fol. 379] By Mr. Pruet:

Q. Has your Company, the Republic Natural Gas Company, filed with the Corporation Commission of the State of Oklahoma the acceptance of its laws relating to the regulation of production and transportation of natural gas required under the provisions of section 6 of Chapter 99 of the Session laws of 1913?

Mr. Foulston: I object to that question. It is incompetent, irrelevant and immaterial and incriminating in its character, and for the reason that the witness and his Company have been advised that there is to requirement to file such.

Chairman Bond: What was the purpose of the question, Mr. Pruet?

Mr. Pruet: Our gas laws provide that before anybody can engage in the business of producing and transporting natural gas in Oklahoma, they got to file an acceptance of the

laws of Oklahoma, and we want to know whether or not they filed that acceptance.

Chairman Bond: The Commission is not the tribunal that has that jurisdiction.

[fol. 380] Mr. Pruet: If they are required to file it, but do not file it, the Commission has authority to have appointed a Receiver for failure to file it.

Mr. Foulston: We do not know whether it has been filed. It involves the construction of that statute.

Mr. Armstrong: That part was declared unconstitutional in Kansas.

Mr. Pruet: This is an Oklahoma statute.

Commissioner Armstrong: I mean Oklahoma.

Mr. Pruet: This statute has not been declared unconstitutional. I know, because I have checked that. I have several cases where our Supreme Court has construed it and upheld it.

Chairman Bond: Don't you think you should start a separate proceeding instead of making it collateral in this case.

Mr. Foulston: I don't know whether it has been filed or not.

Mr. Hurlburt: I would say it would have been filed by the Companies before, before the present management got into it, but I couldn't tell you.

Chairman Bond: If you don't know, that settles the question, so far as the Commission is concerned.

[fol. 381] Thereupon, EARL FOSTER, of lawful age, having been first duly sworn, testified as follows:

Direct examination.

Conducted by R. E. Foulston:

Q. Your name is Earl Foster?

A. Yes, sir.

Q. You reside in Oklahoma City?

A. Yes, sir.

Q. What is your position with the Corporation Commission?

A. I am Conservation Attorney for the Corporation Commission.

Q. Since what date?

A. I believe since 1936, I believe that is right.

Q. Did you, as such Attorney, prepare the papers in the proceedings of J. J. O'Loughlin, for acquisition of jurisdiction in the Hugoton Field?

A. Yes, sir, so far as Texas County, Oklahoma, is concerned.

Q. Will you state to the Commission, prior to that time were there any other proceedings filed for that purpose to your knowledge in the State?

Q. Do I understand you, just in the Hugoton field or anywhere else.

Q. The Hugoton Field is what I am talking about.

A. No other proceedings have been filed to my knowledge.

[fol. 382] Q. Was that a general order?

A. Yes.

Q. The Commission order was made May 5, 1943?

A. I think that is right.

Q. Has an allowable order been fixed by this Commission of the wells of the Republic Natural Gas Company in the Hugoton Field in the State of Oklahoma?

A. Not that I know of.

Q. We rest.

Chairman Bond: Any rebut-al, gentlemen?

Earl Pruet: If the Commission pleases, we rest with the privilege of course of submitting those exhibits from the Cities Service and the exhibits in the Secretary's files.

Chairman Bond: You may now submit them to the Court reporters. They are received into the record.

Earl Pruet: I noticed this morning that we had about five or six different orders in C. D. 817 and I would like to have the reporters check them to see that we have the proper orders in the record.

Chairman Bond: Very good, the Reporters are directed to see that the proper orders are in the record.

[fol. 383] R. E. Foulston: If I have not previously offered all the exhibits, I now offer all of them.

Chairman Bond: All of the exhibits for both sides are received.

Chairman Bond: The Commission will close the case and take it under advisement. Do you gentlemen want to brief the case?

R. E. Foulston: We do.

Earl Pruet: If it is agreeable to all parties, we would like to argue the matter orally.

Ed White: If the Commission pleases, we represent the Texas County Land Owners, while we do not have a direct interest in the case we would like to have the right to file in the case we would like to have the right to file an amicus cur-se brief. We are very much interested in the case. We would like to take part in the oral argument if oral argument is persented to the Commission.

Chairman Bond: Very good, any parties desiring to file an amicus cur-se brief or anyone desiring to take part in an oral argument will be heard by the Commission.

After Counsel has received the record from the Reporters, you will be given 20-20-and-5 to prepare briefs.

[fol. 384] Chairman Bond: The Commission will adjourn until tomorrow morning at ten o'clock.

The Commission adjourned.

[fol. 385] BEFORE THE CORPORATION COMMISSON OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION TO DISCUSS ETC.—Filed October 10, 1944

Comes now the respondent, Republic Natural Gas Company, and moves the Commission as follows:

First: That this application be dismissed by the Commission for one or all of the following reasons:

(a) That the application fails to state any facts (as distinguished from mere conclusions) that the respondent is either a common purchaser or a common carrier of natural gas, or that it is otherwise required under any existing law of the State of Oklahoma, or any rule, order, or regulation of This Commission, valid or invalid, to take or purchase natural gas from its competitor-produce Peerless Oil and Gas Company, Applicant herein.

[fol. 386] (b) That in a proceeding heretofore filed before this Commission entitled In the Matter of the Application of J. J. O'Laughlin, Conservation Officer, being numbered CD 817, of which cause This Commission has retained juris-

diction for the making of further orders or rulings that may be necessary, it was developed and established that the respondent, Republic Natural Gas Company, was not and is not engaged in either the purchase of gas or the taking of the same from the State of Oklahoma, and particularly the Hugoton gas field.

(c) That if it be asserted herein (contrary to the facts as alleged and as disclosed in the hearing above referred to) that Republic Natural Gas Company is a common purchaser and/or a common carrier of natural gas, then This Commission has no jurisdiction to supervise or control said case as the powers relating to the regulation, control, and supervision thereof has been usurped, taken over, and is now controlled by the bureaus, agencies, commissions, and departments located in the City of Washington, D. C. under the provisions of the Natural Gas Act and such jurisdiction is exclusive and paramount to the jurisdiction of This Commission.

Second: In the alternative, respondent requests an order of This Commission requiring that the applicant make its application more definite and certain in the following particulars:

(a) By setting forth the facts and applicable statutes, rules, orders, or regulations under which it is claimed that the applicant has the right to or has consolidated its lease [fol. 387] with the lease owned by the respondent.

(b) By setting forth the facts upon which the conclusion in said application is based that Republic Natural Gas Company is or has been the purchaser of gas in Texas County, Oklahoma, including the name of names of the owners of any lease or producer from whom it is claimed gas was purchased and the time of any such alleged purchase.

(c) By setting forth under what law, order, rule, or regulation it is contended that the respondent, Republic Natural Gas Company, it is required to take and purchase natural gas from the said applicant.

Third: Respondent further moves for a continuance of the hearing herein in case the first portion of this motion be denied, and states that until the said applicant has compiled with the motion and furnished to the respondent a bill of particulars setting forth the facts with reference to its

application, including the laws, rules, orders, regulations, and directives, that it is unable to determine upon what basis the applicant intends to proceed or to determine whether any of such statutes, orders, rules, regulations, and directives have any validity and/or to prepare its defense under the facts. In support of said application for continuance, the respondent says that the legal questions herein involved are important and involve the whole question of the jurisdiction of the Corporation Commission to [fol. 388] supervise and control the production of natural gas in the Hugoton gas field as well as all other gas fields in the State of Oklahoma, and concerning which matter the respondent desires to present and file a brief with the Commission.

Foulston, Siefkin, Bartlett & Powers. By Robert C. Foulston of Wichita, Kansas and Rizely and Tryon. By Ross Rizely of Guymon, Oklahoma, Attorneys for Republic Natural Gas Company.

[File endorsement omitted.]

[fol. 389] Whereupon, on this date, November 29, 1944, having been heretofore set for Oral Argument, all respective parties appearing and announcing ready for oral argument and before the beginning of said oral argument the following exhibits were introduced:

[fol. 390] EXHIBIT 298

Petroleum Administration for War

Washington

PAO No. 11. G-676

June 30, 1943.

Mr. George H. Baird, Cities Service Gas Co., Masonic-Empire Building, Bartlesville, Oklahoma.

MY DEAR MR. BAIRD:

Your application, dated April 24, 1943, as amended by your supplemental plat dated June 17, 1943, for authorization to use material pursuant to paragraph (c) (10) of Petroleum Administrative Order No. 11 has been considered by the Petroleum Administration for War.

It has been determined that the use of material required (1) to drill, equip and/or connect wells listed below, and (2) to install gathering facilities using pipe of the sizes indicated and in locations designated on your plat dated June 17, 1943, but only to the extent required to reach the wells listed below, all in Texas County, Oklahoma, is necessary and appropriate in the public interest and to the promotion of the war program.

Wells to be drilled, equipped and connected

Sections 5, 8, 13, 15, 17, 18, 19, 20, 21, 22, 23, *23*, 24, 26, 27, 28, 29, 30, 32, 33, 34, Township 5 North, Range 15 East, Sections 17, 18, 19, Township 5 North, Range 16 East, Sections 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, Township 4 North, Range 15 East; Sections 13, 24, Township 4 North, Range 14 East.

Wells previously authorized and to be connected only

Section 32, Township 6 North, Range 15 East; Sections 6, 7, 14, 16, 31, 35, Township 5 North, Range 15 East; Section 20, Township 5 North, Range 16 East; Sections 9, 11, 19, 24, Township 4 North, Range 15 East.

You are hereby authorized to use the material required for the proposed operations, provided that:

(1) the proposed compressor station is located in Section 28, Township 5 North, Range 15 east, and

(2) all wells to be drilled shall be in the approximate center of 640-acre drilling units in which all property interests are consolidated with each other, and

[fol. 391] (3) pipe line connections are completed with Republic Natural Gas Company for delivery of the balance of immediate requirements at a point near the southeast corner of Section 1, Township 5 North, Range 14 East, and any other desirable point where pipe lines of both companies may intersect each other, and

(4) any casing which is to be used in the production string and which is not *not* in existing stocks shall be 7-inch O. D. with a nominal weight of 20 pounds per foot, and

(5) the wells in locations listed below shall be connected to lines of the Republic Natural Gas Company: . .

Section 20, Township 6 North, Range 16 East; Section 27, Township 6 North, Range 15 East; Section 12, Township 4 North, Range 14 East;

This authorization extends to any and all interests in any 640-acre drilling unit underlying locations hereinabove designated. In all other respects your application is denied.

Sincerely yours, Ralph K. Davies, Deputy Petroleum Administrator.

[fol. 392] EXHIBIT 51

Memorandum of *Argument*

This agreement entered into on this the *July* 22d day of July, 1943, by and between Cities Service Oil Company and Cities Service Gas Company, as parties of the first part, hereinafter referred to as The Cities Service Companies, and Republic Natural Gas Company, as the party of the second part, hereinafter referred to as Republic,

Witnesseth: That The Cities Service Companies and Republic are each and all corporations organized and legally existing under and by virtue of the laws of the State of Delaware and are duly authorized to do business in the State of Oklahoma.

That said Cities Service Gas Company and Republic on July 19th, 1943, agreed upon and submitted to the Office of the Petroleum Administration for War, Washington, D. C., a certain instrument entitled "Gas Purchase Contract," which agreement is hereby incorporated herein by reference and to the extent only hereby made applicable, the same being referred to as "Gas Purchase Contract."

That on the Twenty-Third day of July, 1943, the Cities Service Companies and Republic agreed upon, for signature and execution, a certain contract for the exchange of certain oil and gas leases covering lands in Texas County, Oklahoma, for the acquisition of certain two gas wells by [fol. 393] Republic and for the disposition of certain litigation between the parties herein, said contract for the purposes of this agreement is designated "Acreage Exchange

Agreement" and same is hereby incorporated in this agreement by reference and made a part hereof.

That for the consideration of the mutual promises and covenants herein contained and for the mutual consideration moving between the parties as set forth in the "Acreage Exchange Contract" and particular-y for the consideration therein whereby the Cities Service Companies have transferred certain oil, gas, and mining leases located in Section 20, Township 6, Range 16, in Texas County, Oklahoma, and the gas well located therein known as the "Burdge Well" and in Section 32, Township 6, Range 15, in Texas County, Oklahoma, and the gas well located therein known as the "Wheeler Well," to a nominee of Republic, it is further agreed between the parties hereto as follows:

That in order to obviate, so far as possible, any actual reduction to Cities Service Gas Company, in the fifty-eith (58) gas well permits heretofore granted it in said area by the Office of Petroleum Administration for War, on account of the sale of said Burdge and Wheeler wells to Republic, the parties hereto agree as follow:

I

Cities Service Gas Company will promptly made and pursue applications to the Office of Petroleum Administration for War for two (2) additional well permits to [fol. 394] re-establish the said total fifty-eight (58) permits and thereby secure said bureau's sanction to drill two (2) wells in lieu of the Wheeler and Burdge wells so sold to account of Republic. Republic will do whatever it may properly and lawfully do to assist Cities Service Gas Company in the premises. Such application shall seek permits to drill such two (2) additional wells in Section 4 and Section 9, Township 5, Range 15, in Texas County, Oklahoma, or upon such other locations on oil and gas leases now owned or hereafter acquired in the reasonable proximity of its proposed well and gathering system in or about Townships 4 and 5, Range 15, Texas County, Oklahom-, but not within two (2) miles of the well located in Section 6, Township 5, Range 15, Texas County, Oklahoma (being the section in which the Hubbard well is located), said locations to be determined by Cities Service Gas Company.

II

If it shall appear that the Office of Petroleum administration for War shall grant the drilling permits as in paragraph one above, but is willing to grant Cities Service Gas Company such well permits only on the condition that Republic will withdraw its application as relates to two (2) of the eight (8) well permits for which applications by Republic are now pending (the same having been informally approved by the local representatives of PAW, but which [fol. 395] have not been actually issued), then in event such action is necessary to the obtaining of said permits by Cities Service Gas Company, Republic will reduce its pending requests to six (6) wells in lieu of said eight (8) wells. The two (2) wells to be so eliminated from the eight (8) well applications shall be determined by Republic.

III

In event such permits for the drilling of said two (2) additional wells are obtained, as stated in paragraph one above, or, alternately, as provided in paragraph two above, Republic will, as soon as possible upon being advised of the granting of such permits and the well locations by Cities Service Gas Company, cause a responsible and competent drilling contractor to enter upon the first location designated by Cities Service Gas Company and to commence and thereafter drill with due diligence the first of said wells. Said drilling shall be continued with due diligence to the depth at which gas production is customarily found in said locality. If such drilling results in production of gas, said well shall be completed and equipped substantially in the same manner as the Burdge and Wheeler wells were completed and equipped by Cities Service Gas Company.

Upon the completion of the said first well Republic shall immediately cause the drilling of the second well to be commenced and thereafter such drilling prosecuted with due [fol. 396] diligence to completion, and if said second well is productive of natural gas it shall be completed and equipped in a similar manner as in the case of said first well. The drilling, the completion and the equipment of both said wells (if they are so equipped) shall be in accordance with the field practices and customs prevalent in that vicinity. During the drilling, completion, and equipping

of said wells the work shall be carried on under the operative supervision of the representatives of the Cities Service Gas Company and in accordance with their wishes, and the Representatives of the Cities Service Gas Company shall be accorded free access to the drilling operations and shall have available to them all geological and drilling data in connection with said operations. It is understood, however, that in the drilling and completing of said two wells seven-inch (7") casing shall be used in lieu of the eight and five-eighths-inch (8⅝") casing heretofore used by Cities Service Gas Company in the drilling and completion of said Burdge and Wheeler Wells.

If either or both of said wells shall be unproductive of natural gas in commercial quantities and abandoned, Republic shall either credit on the $36,009.36 or pay to Cities Service Gas Company a sum of money which will represent the difference in the cost to Republic to drill and complete said well or wells as a producer or producers and the cost of drilling and abandoning the dry wells.

[fol. 397] IV

If and when the drilling of said two wells shall have been completed, as herein provided, (and if producers, equipped) possession of said wells shall be delivered to Cities Service Gas Company and Cities Service Gas Company shall pay Republic the sum of Thirty-Six Thousan- Nine Dollars and Thirty-six Cents ($36,009.36). Thereupon all obligation of all parties hereto shall be deemed to have been fully performed and executed as relates to such two wells.

V

Should Cities Service Gas Company be unable to obtain permits for the drilling of the two wells herein contemplated, Republic may, at its option (but shall not be required to so do), transfer and deliver to the Cities Service Companies two (2) of its now existing or hereafter completed gas wells, so located as to their desirability for use by Cities Service Gas Company in its projected and contemplated gathering system as may be acceptable to Cities Service Gas Company. The wells in order to be accepted shall be located on unitized oil and gas leases comprising approximately 640 acres. And upon such delivery and acceptance the obligation of Republic under this contract

shall be deemed fully executed and discharged. In event Republic transfers and delivers to the Cities Service Companies the two (2) wells above described and the unitized leases covering 1280 acres, to-wit, two (2) 640-acre units, as herein provided, which wells are acceptable to and [fol. 398] accepted by Cities Service Gas Company, the Cities Service Companies will transfer and deliver to Republic oil and gas leases covering 1280 acres, to-wit, two (2) drilling units of approximately 640 acres each, acceptable to Republic, and Cities Service Gas Company shall pay Republic the sum of Thirty-six Thousand Nine Dollars and Thirty-six Cents ($36,009.36). Whereupon, and in this event, the contract shall be fully discharged and the obligation of Republic otherwise herein provided relating to the drilling of said two (2) wells shall be deemed fully fulfilled and discharged.

VI

In event Cities Service Gas Company, as provided in paragraphs one and two hereof, in the exercise of its best effort to procure said well permits shall, without fault on its part, be unable to procure such drilling permits, before the dates when Cities Service Gas Company shall be ready to receive gas under the terms of said Gas Purchase Agreement above recitied (said Gas Purchase Agreement having become effective between the parties thereto) or if there shall at said time be in effect some other gas purchase contract between Cities Service Gas Company and Republic, and if the alternate provisions of paragraph five shall not have been mutually agreed upon by Republic and Cities Service Gas Company, as therein provided, then in dis- [fol. 399] charge of its obligation hereunder and in lieu of (but not in addition to) its obligation covering said two (2) wells, Republic hereby agrees to:

(a) Deliver to Cities Service Gas Company, free of cost, except as herein limited, natural gas in quantities equal to but not in excess of the well allowables of the Burdge and Wheeler Wells as determined by the Corporation Commission of the State of Oklahoma for the combined and total production by said Commission, and Republic agrees to use its best efforts to cause the allowable for said two (2) wells to be relative with other wells producing natural gas in said area and to avoid any discrimination against such allowables as relates to said Burdge and Wheeler wells.

(b) Such natural gas, however, may or may not be actually delivered from the Burdge and Wheeler wells and natural gas, whether produced or not from said wells, delivered by Republic hereunder shall be acceptable to Cities Service Gas Company.

(c) Cities Service Gas Company shall pay Republic, to reimburse Republic for its obligation to land owners and royalty owners, five-eight-s (⅝) of One Cent (1¢) per MCF. Cities Service Gas Company shall also pay to Republic that reasonable sum which shall represent Republic's actual operating expense in connection with the operation and maintenance of said Burdge and Wheeler wells, to-[fol. 400] gether with ad valorem, production, and other taxes actually attributable to said wells and such production, and also including the reasonable allocated amount of line losses apportioned to the gas thus delivered from said Burdge and Wheeler wells, or in lieu thereof, and Cities Service Gas Company shall not be required to pay any other consideration or purchase price for the delivery of said gas.

(d) The delivery of the gas provided in this paragraph and the conditions relating to measurements, installation of meters, connections, title to the gas; and other relative conditions of such Gas Purchase Contract relating to the delivery of gas under the same, shall relate to and control the terms of gas deliveries under this Contract and are hereby made equally applicable.

(e) The natural gas delivered under this agreement shall be in addition to, independent of, and not in diminution of the obligation of Republic to deliver and Cities Service Gas Company to receive natural gas under said contract.

(f) The actual delivery of natural gas by Republic under this paragraph VI, when and if made, shall be deemed in full satisfaction and discharge of every other obligation of Republic otherwise to drill and complete said two (2) gas wells as herein provided.

(g) Having once begun the delivery of gas under this paragraph, Republic shall be obligated to continue such deliveries (but in no event longer than twenty (20) years from the date hereof) until that day upon which (the first

[fol. 401] in point of time) the following contingencies shall have occurred:

1. Republic shall have ceased to deliver and Cities Service Gas Company shall have ceased to receive Natural gas under the terms of said Gas Purchase Contract; or

2. Ninety (90) days after "the cessation of hostilities," as that term is defined and limited under the terms of the said Gas Purchase Contract; or

3. Cities Service Gas Company shall be able to obtain two (2) well permits for the drilling of two (2) gas wells in addition to those permits normally required in its development program, plus ninety (90) days thereafter; or

4. Until ninety (90) days following that day when Cities Service Gas Company can lawfully and without inhibition of any United States government bureau or agency drill its own wells without hindrance; or

5. When Cities Service Gas Company in its uncontrolled and uncontrollable judgment shall have determined that it no longer desires to receive delivery of natural gas under this provision of this Contract, and shall so notify Republic in writing.

VII

This contract shall extend to and be binding upon the successors, trustees, and assigns of the parties hereto.

[fol. 402] In witness whereof these parties have caused this Contract to be executed and delivered the day and year above written.

Cities Service Oil Company, by H. R. Straight, President. Attest: M. A. Wilson, Asst. Secretary.

—— ——, by H. R. Straight, President. Attest: G. C. Roth, Asst. Secretary.

Republic Natural Gas Company, by Wm. H. Wildes, President. Attest: Jack L. Bianchi, Asst. Secretary.

[fol. 403] Supplementary Agreement. GP 619

This Agreement, made April 26, 1944, between Republic Natural Gas Company, of Dallas, Texas, as Seller and Cities Service Gas Company, of Bartlesville, Oklahoma, as Buyer:

Witnesseth: Whereas, on the 19th day of July, 1943, the parties entered into a "Gas Purchase Contract" covering deliveries of gas by Seller to Buyer in the Texas County, Oklahoma portion of the Hugoton field, and

Whereas, paragraph numbered 1 of said contract provided for a point of delivery near the SE corner of Section 1, Township 5N, Range 14 E, Texas County, Oklahoma, and any other delivery points thereafter mutually agreed upon between the parties, and

Whereas, the parties now desire to establish an additional delivery point near the SE corner of Section 13, Township 4 N, Range 14 E in said county.

Now, Therefore, in consideration of the covenants hereof, the parties do agree that deliveries may be made at the following additional delivery point to-wit:

A point near the SE corner of Section 13, Township 4N, Range 14E, Texas County, Oklahoma.

In Witness Whereof, the parties have hereunto subscribed their names this 29th day of April 1944.

[fol. 404] Republic Natural Gas Company, Seller, by Alfred Hurlburt, Vice President.

Attest: L. J. Golden, Secretary.

Cities Service Gas Company, Buyer, by Geo. H. Baird, Vice President.

Attest: G. C. Roth, Asst. Secretary.

[fol. 405] EXHIBIT No. 52

Special Warranty Deed

Know All Men By These Presents:

That Central Life Assurance Society (Mutual) of Des Moines, Iowa, in consideration of the sum of Five Thousand Five Hundred and no/100 ($5,500.00) Dollars, in

hand paid, the receipt of which is hereby acknowledged, hereby grant, bargain, sell and convey unto F. H. Crump, of Wichita, Kansas, the following described real property and premises situate in Texas County, Oklahoma, to-wit:

The West Half (W½) and the Southeast Quarter (SE¼) of Section Fourteen (14), Township Six (6) North, Range Fifteen (15) East of the Cimmaron Meridian

(Documentary Stamps $5.50) attached

together with all improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same, as to all parties claiming title by, through, or under grantors herein.

To Have And To Hold the said described premises unto the said F. H. Crump, his heirs, successors and assigns forever, free and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature and kind. Except taxes for the year 1939 and all subsequent years, which the grantee assumes and agrees to pay, and except oil and gas mining [fol. 406] lease with W. E. Benson dated December 31, 1936.

Signed and delivered this 19th day of April, 1939.

Central Life Assurance Soci-ty, by Paul Wilson, Vice President. (Seal.)

Attest: F. S. Wilfinger, Secretary.

Acknowledgment for Corporation

STATE OF IOWA,
County of Polk, ss:

On this 19th day of April, A. D., 1939, before me, the undersigned, a Notary Public, in and for the county and state aforesaid, personally appeared Paul Wilson, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary *set* and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year first above written.

[fol. 407] Pearl McGilvra, Notary Public. (Seal.)

My Commission expires July 4, 1939.

Endorsed: 289505. Speical Warranty Deed from Central Life Assurance Society (Mutual) to F. H. Crump.

STATE OF OKLAHOMA,
County of Texas, ss:

This instrument was filed for record on May 1, 1939 at 11 O'clock A. M. and duly recorded in Book 205 of Page 437.

Anna Lee Williamson, County Clerk.

Fee -1.00.

[fol. 408] EXHIBIT No. 53

Mineral Deed

* * * * * * *

This Indenture, made and entered into on this 24th day of April, 1942, by F. H. Crump, a single woman, of Sedgwick County of the State of Kansas, of the First Part, and Republic Natural Gas Company, a Delaware Corporation, of Dallas, Texas, as Party of the Second Part.

Witnesseth: What, the said Party of the First Part, for and in consideration of the sum of Ten ($10.00) Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said Party of the Second Part all of the oil, gas, coal and other minerals now or at any time hereafter lying in or under or that may be produced from the following described tracts of land located in the County of Texas, State of Oklahoma, to-wit:

The West Half (w½) of Section 14, and the Southeast Quarter (SE¼), of Section 14, all in Township 6 North, Range 15 ECM., containing 480 acres, more or less;

Lots 1, 2, 3, and 4 of Section 12, in Township 6 North, of Range 16 E. C. M., and Lot 4 of Section 7 Township 6 North, Range 17 E. C. M. containing 165.11 acres, more or less;

Lots 3 and 4 of Section 9; Lots 1, 2, 3, and 4 of Sec-
[fol. 409] tion 8, all in Township 6 North, Range 16 E. C. M., containing 169.15 acres, more or less;

The North west Quarter (NW¼) of Section 35, Township 6 North, Range 15 E. C. M., containing 160 acres, more or less;

The Southeast Quarter (SE¼) of Section 34, Township 6 North, of Range 17 E. C. M., containing 160 acres more or less;

Lots 1, 2, 3, and 4, of Section 9, Township 6 North, of Range 17 E. C. M., containing 145.76 acres, more or less;

Northeast Quarter (NE¼) of Section 7, Township 5 North, Range 14 E. C. M., containing 160 acres, more or less;

North Half (N½) of the Southwest Quarter (SW¼) of Section 5, and the Northwest Quarter (NW¼) of Section 9, all in Township 5, North, Range 14 E. C. M., containing 240 acres, more or less;

Southeast Quarter (SE¼) of Section 24, Township 6 North, Range 17 E. C. M., containing 160 acres, more or less;

Northwest Quarter (NW¼) of Section 19, Township 6 North, of Range 18 E. C. M., containing 157.93 acres, more or less,

together with all the right, title, interest, and a state of the Grantor, under and by virtue of any oil and gas mining leases or other mineral leases now or hereafter existing upon the above described premises or any part thereof, including all the rents, royalties, bonuses and other benefits accrued or to accrue under and by virtue of any leases now or hereafter existing upon the above described property or any part thereof, together with the perpetual and irrevoca*l*be right, privilege and easement of entering upon said lands and searching for, drilling wells, sinking shafts, mining, digging, extracting, taking and carrying away all of the oil, gas, coal and other minerals in or under said lands [fol. 410] or that may be found therein or thereunder; also the right to possession and use of so much of said premises at all times as may be necessary to the practical carrying out of the purposes and provisions of this conveyance of

all the oil, gas, coal, and other minerals in and under and that may be produced from the above described real property together with the further right to lay pipelines, build tanks for the storing of oil, gas, and other minerals, building of power stations, telephone lines and other structures thereon necessary to produce, save, take care of, manufacture and market all of such substances and for housing and boarding employees; also the right to the use of water found on said lands for operations thereon, except water from wells belonging to the First Party.

It is hereby understood that the rights herein granted to the Grantee and the terms and condictions of this grant shall be construed as convenants running with the above described lands and shall extend to and be binding upon the heirs, executors, administrators, successors or assigns of the parties hereto.

To Have And To Hold the above described property together with all and singular the rights, appurtenances thereto or in any wise belonging unto the said Grantee, Republic Natural Gas Company, its successors and assigns forever.

[fol. 411] And for the same consideration the First Party does hereby covenant, promise and agree to and with the said Party of the Second Part that at the delivery of those presents she is lawfully seized in her own right of the interest hereby conveyed in the above granted and described premises, and that she has not previously mortgaged, assigned or encumbered the interests herein conveyed; that she has good right and authority to convey the interest herein conveyed.

In Witness Whereof, the Party of the First Part has hereunto set her hand the day and year first above written.

F. H. Crump.

State of Kansas,

County of Sedgwick, ss:

Before me, the undersigned, A Notary Public, in and for said County and State on this 24 day of April, 1942, personally appeared F. H. Crump, a single woman, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed

EXHIBIT

Form P. L. [redacted]
Kan.. & Okla.

OIL AND GAS LEASE

THIS AGREEMENT, Entered into this the 13th day of November, 19 27

between Annie M. Cuthbert, a widow (also known as A. M. Cuthbert)

J. V. Blankenship and Cuba A. Blankenship, husband and wife,

hereinafter called lessor,

and W. E. Benson hereinafter called lessee, does witness:

1. That lessor, for and in consideration of the sum of One & No/100 - Dollars ($1.00)

in hand paid, and of the covenants and agreements hereinafter contained to be performed by the lessee, has granted and leased and by these presents does grant, lease and let unto the lessee for the purpose of drilling and operating for oil and gas and of producing, saving and marketing oil and gas, laying pipe lines, building tanks, storing oil and gas, and constructing roads and other structures thereon, to produce, save, take care of and manufacture all of such substances, and for housing and sheltering employees, the following described land in Osage County, Oklahoma, to-wit:

Texas County, Oklahoma, to-wit:

The Northeast Quarter (NE¼) of Section Fourteen (14),

Township Six (6) North, Range Fifteen (15), ECM,

[redacted] and containing 160 acres, more or less.

2. This lease shall remain in force for a term of ten (10) years and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of them is produced.

3. The lessee shall deliver to the credit of the lessor or royalty, free of cost, in the pipe line to which lessee may connect its wells the equal one-eighth part of all oil produced and saved from the leased premises, or at lessee's option may pay to lessor for such one-eighth royalty the market price for all of the oil so produced and saved from the leased premises on the day it is run to the pipe line or put in storage tanks.

4. The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas as such, for gas from each producing gas well, where gas is found, and where not sold shall pay Fifty ($50.00) Dollars per annum as royalty for each well from which gas is not sold or used, which shall be held to be a producing well under paragraph numbered two hereof, during the time such gas shall be sold or used off the premises or for the purpose of manufacturing gasoline or any other product as royalty, one-eighth of the market value at the well of one-eighth of the gas so used, provided that on gas sold at the wells the royalty shall be one-eighth of the proceeds from the sale thereof.

5. If operations for the drilling of a well for oil or gas are not commenced on said land on or before one year from this date, this lease shall terminate as to both parties, unless the lessee shall on or before one year from this date, pay or tender to the lessor or to the lessor's credit in the City National Bank at Pawhuska, Oklahoma, or its successors, which bank and its successors are the lessor's agent and shall continue as the depository of any and all sums payable under this lessee, regardless of changes of ownership in said land or in the oil and gas, or in the rentals or monies thereunder, the sum of - - - - - - - - - - - - - - Eighty & No/100 - - - - - - - - - - - - - - Dollars ($ 80.00) which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one year. In like manner and upon the payments or tenders, the commencement of drilling operations may be further deferred for like periods successively. All payments or tenders may be made by check or draft of lessee or any assignee thereof, mailed or delivered on or before the rental paying date. Payments or tenders may be made to lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors, and administrators of such person.

6. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, the lessee shall drill a dry hole on this land, this lease shall not terminate, provided operations for the drilling of a well shall be commenced by the next succeeding rental paying date, or provided the lessee begins or resumes the payment of rentals in the manner and amount hereinabove provided; and in the event the preceding paragraphs hereof governing the payment of rentals and the manner and when same shall be made, should become inoperative, then the lessee shall continue to have the right to maintain this lease in force during the remainder of the term hereof as to the land described in the last assignment executed and delivered hereunder.

7. In case said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said lessor only in the proportion which the interest leased bears to the whole and undivided fee.

8. The lessee shall have the right to use free of cost, gas, oil and water found on said land for its operations thereon, except water from the wells of the lessor. When required by lessor, the lessee shall bury pipe lines below plow depth and shall pay for damages caused by the operations thereon to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without the consent of the lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings and other structures placed on said premises, including the right to draw and remove all casing.

9. Lessee is expressly granted the right and privilege to consolidate into a gas household estate as defined by the State Corporation Commission of Oklahoma at the time of consolidation, as the lessee's part of a gas unit, the gas household estate of which lessor may own one or more tracts of land [illegible] and as apportioned to the tracts described generally. Provided that in the event such consolidated household estate created as aforesaid shall not go through the consolidation with a consolidated unit covered and embraced in this lease originally, and in such event the royalties payable hereunder shall be prorated and paid to the respective lessors on the proportion that each lessor's acreage in the consolidated estate bears to the total acreage in such consolidated gas household estate, and a proportionate part of the consolidated estate shall operate to maintain the entire household estate in the whole of the same for so long as gas is produced therefrom.

10. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to the heirs, executors, administrators, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the lessee until after notice to the lessee and it has been furnished with the written transfer or assignment or a certified copy thereof.

...ways common.

11. ...leased premises shall hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire leased acreage. There shall be no obligation on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks. It is hereby agreed that, in the event this lease shall be assigned as to a part or as to parts of the above described lands, and the holder or owner of any such part or parts shall fail to make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said land upon which the said lessee or any assignee hereof shall make due payment of said rentals. If at any time there be as many as four parties entitled to rentals or royalties, lessee may withhold payments thereof unless and until all parties designate, in writing, by a recordable instrument to be filed with the lessee, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties, and their respective successors in title.

12. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands and, in event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

13. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and the term hereof shall continue so long as such operations are prosecuted and, if production results therefrom, then as long as production continues.

14. If within the primary term of this lease production on the land or premises shall cease from any cause, this lease shall not terminate provided operations for the drilling of a well shall be commenced before or on the next ensuing rental paying date; or, provided lessee begins or resumes the payment of rentals in the manner and amount herein before provided. If, after the expiration of the primary term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided lessee commences operations for drilling a well within sixty (60) days from such cessation, and this lease shall remain in force during the prosecution of such operations and, if production results therefrom then as long as production continues.

15. Lessee may at any time surrender this lease by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the proper county.

16. This lease and all its terms, conditions, and stipulations shall extend to and be binding on all successors of said lessor or lessee.

IN WITNESS WHEREOF, we sign the day and year first above written.

WITNESS

J. B. Blankenship

Lula L. Blankenship

Ossie M. Quatchbone

416-A

416-A

238A

290

STATE OF Illinois
COUNTY OF Cook } ss. Oklahoma, Kansas and Colorado Form of Acknowledgment

Before me, the undersigned, a Notary Public, in and for said County and State, on this 11th day of December, 1937, personally appeared A. E. Cuthbert, a widow (also known as A. E. Cuthbert)

to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.
Given under my hand and seal the day and year last above written.

My commission expires Oct. 11 1941 Oscar N. Nelson
Notary Public

STATE OF OKLAHOMA
COUNTY OF TEXAS } ss. OKLAHOMA FORM OF ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State, on this 9th day of December, 1937, personally appeared J. V. Blankenship and Cuba A. Blankenship, husband and wife,

to me personally known to be the identical person s who executed the within and foregoing instrument, and acknowledged to me that executed the same as their free and voluntary act and deed for the uses and purposes therein set forth

Given under my hand and seal the day and year last above written

My commission expires 1-19- 1939 [illegible]
Notary Public

STATE OF [illegible]
COUNTY OF [illegible] } ss. ACKNOWLEDGMENT OF CORPORATION

Before me, the undersigned, a Notary Public, within and for said County and State, on this [illegible] day of [illegible], 19[illegible], personally appeared [illegible] to me known to be the identical person who subscribed the name of the maker thereof to the within and foregoing instrument as its [illegible] President and acknowledged to me that he executed the same as [illegible] free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and official seal the day and year last above written.

My commission expires [illegible]
Notary Public

OIL AND GAS LEASE

Dated

TO

Date, ____, 19__

Section ____ Township ____ Range ____

No. of Acres ____

Town ____

County ____

STATE OF Kansas }
County of Stevens } ss.

The instrument was filed for record on the 23 day of Dec. 19 37 at 1 o'clock P.M. and duly recorded in Book 242 Page 639

Witness my hand and seal of office.

Emma A. Wallbaum
County Clerk

By ____ Deputy.

When recorded, return to ____

THE KANSAS BLUE PRINT CO.
[illegible]

No acknowledgment by mark, see regular Kansas acknowledgment.

KANSAS FORM OF ACKNOWLEDGMENT

STATE OF KANSAS }
County of ____ } ss.

BE IT REMEMBERED, That on this ____ day of ____ in the year of our Lord one thousand nine hundred and ____, before me, a Notary Public in and for said County and State came ____ and ____

to me personally known to be the identical person ____ who executed the above and foregoing instrument, and who each duly acknowledged the execution of the same.

In Witness Whereof, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

My commission expires ____ ____ Notary Public.

NOTE: Where signature by mark in Kansas, said mark MUST be witnessed by at least one person and also acknowledged.

416-B

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2388

[fol. 417] EXHIBIT No. 55

Assignment of Oil and Gas Lease

Whereas, On the 31st day of December, 1936, a certain oil and gas mining lease was made and entered into by and between Central Life Assurance Society (Mutual), Lesso-, and W. E. Benson, Less--, covering the following described land in the County of Texas and State of Oklahoma, to-wit:

> The West One-half (W½) and the Southeast Quarter (SE¼) of Section Fourteen (14) in Township Six (6) North of Range Fifteen (15) E.C.M. containing 480 acres, more or less.

Said lease being recorded in the office of the County Clerk of said County, in Book 204, Page 314 and

Whereas. The said lease and all rights thereunder or incident thereto are now owned by W. E. Benson.

Now, Therefore, For and in consideration of One Dollar (and other good and valuable consideration), the receipt of which is hereby acknowledged, the undersigned, the present owner of the said lease and all rights thereunder or incident thereto does hereby bargain, sell transfer, assign and convey unto Peerless Oil and Gas Company all of the right, title and interest of the original lessee and present owner in and to said lease and rights thereunder insofar as it covers the above described land, together with all [fol. 418] personal property used or obtained in connection therewith to Peerless Oil and Gas Company and its successors and assigns.

And for the same consideration, the undersigned for himself and his heirs, successors and representatives does covenant with the said assignee, its successors or assigns that he is the lawful owner of the said lease and rights and interests thereunder and of the personal property thereon or used in connection therewith; that the undersigned has good right and authority to sell and convey the same, and that said rights, interest and property are free and clear from all liens and incumbrances, and that all rentals and royalties due and payable thereunder have been duly paid.

In Witness Whereof, The undersigned owner and assignor has signed and sealed thi- instrument this 30th day of January, 1937.

W. E. Benson, (Seal.)

[fol. 419] EXHIBIT 57

(1)

May 29, 1944.

Federal Power Commission
Washington 25, D. C.

Attention: Mr. Leon M. Fuquay, Secretary

GENTLEMEN:

Reference is hereby made to your letter of May 22, 1944, concerning the status of Republic Natural Gas Company, under the Natural Gas Act by reason of compliance with certain requests of the Petroleum Administration for War.

The paragraph next preceding the last of your letter we think might be subject to diverse construction. It is stated:

> "... the Commission will not utilize the proposed transactions, as herein specified, during the present war emergency as a basis for asserting jurisdiction over your company under the Natural Gas Act."

Are we correct in assuming that the phrase "during the present war emergency" refers to the doing of the acts referred to and is not intended to place a limit of time during which the Commission will not "utilize."

Our understanding in our discussions with the Office of Petroleum Administration for War was that, by having made the connections and transporting the gas during the war emergency, would not at any time (during the war emergency or thereafter) be utilized by the Commission as a factor in determining its jurisdiction, or lack of it, over Republic Natural Gas Company.

Will you kindly advise.

Very truly yours, Republic Natural Gas Company, by W. H. Wildes, President.

CC: Mr. James E. Pew, Director, Natural Gas and Natural Gasoline Division, Petroleum Administration for War, Washington 25, D. C.

WHW:mh

{fol. 420}

Western Union

1201 1944 Jun 15

A. N. Williams, President

Class of Service. This is a full-rate Telegram o- Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

Symbols. DL—Day Letter. NL—Night Letter. LC—Deferred Cable. NLT—Cable Night Letter. Ship Radiogram.

The Filing Time shown in the date line on telegrams and day letters is Standard Time at point of origin. Time of receipt is Standard Time at point of destination.

Bu Dallas Tex

DA67 AA 89 WN72

mj78 Govt DL= MJ Washington DC 15 421P

Republic Natural Gas Co =

1505 Federal St Dallas Tex Atten Mr W H Wildes President =

Reurlet of May 29 requesting an interpretation of the Commission's letter of assurance, dated May 22, 1944, concerning the status of Republic Natural Gas Company under the Natural Gas Act by reason of compliance with certain requests of the Petroleum Administration for War. The assumption stated in your letter that the Commission will not utilize the war emergency transactions heretofore specified as a basis for asserting jurisdiction over your company under the Natural Gas Act is correct =

Leon M Fuquay Secretary Federal Power Commission

the company will appreciate suggestions from the patrons concerning its service

[fol. 421] EXHIBIT 63

Kansas State Corporation Commission Conservation Division

800 Bitting Building, Wichita, Kansas

Gas Proration Order and Report for Otis Field

For October, 1944

T. A. Morgan, Director

[fol. 422] Before the State Corporation Commission of the State of Kansas

Docket No. 27,272-C. (C-1032)

Conservation Division

In the matter of determining the market demand for gas and fixing quotas for wells within the OTIS POOL, Rush and Barton Counties, Kansas

ORDER

Now on this 9th day of October, 1944, this matter comes on for consideration and determination upon the evidence heretofore introduced herein on August 23, 1944, at a hearing held at the Allis Hotel, Wichita, Kansas, and the Commission being fully advised in the premises, finds:

1. That the reasonable market demand for gas produced from said pool during the month of October, 1944, is 1,355,492 M.C.F.; that production in excess of said amount would result in waste as that term is defined by Article 7, Chapter 55, G. S. 1935; that in order to prevent such waste, the production of natural gas from said common source of supply should be restricted and limited to the amount of the reasonable market demand and the total allowed production from said pool for said period should be established at 1,355,492 M. C. F.; that in order to protect the respective correlative rights of the producers and other interested parties having the right to withdraw natural gas from the common reservoir and in order to permit the wells and developed leases therein to currently produce proportionately so that each may ultimately produce approximately the amount of gas underlying it, production quotas for the several developed leases and wells should be established during said period in accordance with the Basic Order

heretofore entered herein; provided, however, that in order more fully to carry out the purposes of the Order of 41-4-26 issued in Docket No. 14,534 as amended by the Order of 43-2-16 in Docket No. 16,028, production from the combination wells in said pool shall for the month of October, 1944, and until the further order of the Commission be allowed in the aggregate the amount of 4,250 M. C. F. daily.

2. That during the month of August, 1944, certain wells in the pool accumulated overages in the amount of 80,492 M. C. F.; that in order to have ratable production within and between the wells and developed leases in said pool, said wells that accumulated the overages should be credited with their portion thereof figured on the basis that the said 80,492 M.C.F. constituted a demand from said pool that should have been satisfied from all of the wells therein; that when so figured the balance or remaining portion of said overages not charged to the wells that produced same should be distributed and credited as underages to the remaining wells in said pool in accordance with the formula set forth in the Basic Order.

3. That the open-flow potentials, the acreage, the individual wells pressures and the ratable standing of the wells as of August 31, 1944, are in the amounts and figures as set out in the October allowable report which is attached hereto, marked Exhibit "A" and made by reference a part hereof; that the allocation of the allowed production within and between the wells in said common source of supply and the individual well production quotas should be made and established in the manner and form prescribed by the said Basic Order, modified only by the provisions entered herein, and when so made and established are in the amounts and figures as set out in said schedule, Exhibit "A", when so calculated and computed as stated in the Explanation preceding said schedule, such allowables should constitute the maximum permissible production from the said wells and leases during the period covered by this order.

[fol. 423] 4. That in order to protect correlative rights of producers having the right to withdraw gas from the common pool, the Commission finds that all wells with an overproduction of 50,000 M.C.F., or more, as shown by the schedule and report attached hereto as Exhibit "A", should be shut in and not permitted to produce any gas until such overproduction has been fully absorbed by deductions made from current allowables.

It is, therefore, by the Commission ordered: That the total allowed production of natural gas from the Otis Gas Pool located in Rush and Barton Counties, Kansas, for the month of October, 1944 be and the same is hereby established at 1,355,492 M.C.F.; that the total allowed production so established be and the same is hereby allocated among and between the several developed leases and wells in said pool in the manner prescribed by the Basic Proration Order heretofore entered herein, modified only by the provisions entered herein, and when so distributed, each well's production quota is in the amount as set out in the said schedule, Exhibit "A" when calculated and computed as stated in the Explanation preceding said schedule, production of natural gas from said common source of supply and from each of the developed leases and wells therein shall be limited during the period covered hereby to the respective allowables established for the said pool and each of the said wells therein.

It is further ordered: That the overages accumulated by certain wells in said pool during the month of August, 1944, be adjusted in accordance with the findings herein made with respect to said overages so that each and every well and developed leases shall receive its proportionate part of the production represented by said overages as measured by the formula as set forth in said Basic Order.

It is further ordered: That all wells with an overproduction of 50,000 M.C.F. or more as shown by the schedule and report attached hereto as Exhibit "A" be and they are hereby directed to be closed in and such wells shall not produce any gas until their overproduction has been fully made up by deductions made from current allowables.

It is further ordered: That the open-flow potentials, the acreage factors, the individual well pressures and the ratable standing of the wells as of August 31, 1944, be and the same are hereby adopted and established as set out and described in the schedule, Exhibit "A", attached to this order.

By the Commission it is so ordered.

Victor L. Kirk, Secretary. (Seal.)

[fol. 424] Explanation

Gas Allowables, Otis Pool—October, 1944

The current allowables shown for each gas well and each combination oil and gas well in the Otis Pool are based

on an estimated production of 1,275,000 M.C.F. for the month of October, 1944, which amount includes producible underages.

Allowables are computed in accordance with Kansas Corporation Commission's Order No. 37-12-28, ¾ being allocated to Acreage times Pressure and ¼ to Open-Flow.

To ascertain the Net October status for any well, first find the difference between the current allocation as shown on the September schedule and September runs, then add this amount algebraically to the August 31st ratable standing shown on current report. By algebraically adding this amount to October allocation, the October net status is reached.

Nominations for August, 1944	810,000	M.C.F.
Pipe Line Runs for August, 1944	890,492	M.C.F.
Over	80,492	M.C.F.
October Net Allowable	1,275,000	M.C.F.
October Current Allocation	1,355,492	M.C.F.
Less 4,250 M.F.C. Daily for Combination Wells	131,750	M.C.F.
Net October Current	1,223,742	M.C.F.

Pipe Line Runs August, 1944:

Central Gas Utilities	72,660	M.C.F.
Kansas-Nebraska Natural Gas Co.	36,785	M.C.F.
Kansas Power & Light Co.	1,442	M.C.F.
Kenwood Oil Co.	198	M.C.F.
Northern Natural Gas Co.	391,152	M.C.F.
Producers Gas Co.	245,681	M.C.F.
	747,918	M.C.F.
Unprorated wells	142,574	M.C.F.
	890,492	M.C.F.

Symbols:

(M.C.F.) Indicates Thousand Cubic Feet
(•) Indicates Minimum Well

State Corporation Commission. T. A. Morgan, Director, Conservation Division.

[fol. 425]

EXHIBIT "A"

Otis Field

October, 1944 Production Schedule

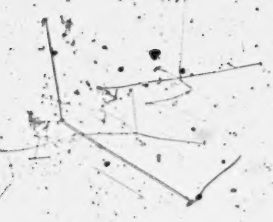
Pool Allocation 1,223,742 M.G.F.

Producer Lease	Description	Open Flow	Pressure	Acreage	Acre Pound	Acre Pound Portion	Open Flow Portion	October Allocation	August Allocation	Aug. Runs	Ratable Standing August	Ratable Standing 7-31-44	Ratable Standing 8-31-44
Kansas-Nebraska Natural Gas Co.													
Aylward													
Mohr	NW-13	9,500	327	160	52,320	11,455	2,884	14,339	5,732	36,785	−31,053	27,492	−3,561
Reidl	NE-13	25,200	332	160	53,120	11,630	7,651	19,281	7,707	0	7,707	−146,107	−138,400
Kansas Power P Light Co.													
Kenwood													
Eitel	SE-10	13,650	313	240	75,120	16,447	4,144	20,591	8,231	0	8,231	−84,093	−75,862
Eitel-Mohr	NE-10	12,500	312	320	99,840	21,859	3,795	15,654	10,255	224	10,031	21,665	31,696
Hagelgantz	SE-11	32,100	317	240	76,080	16,657	9,746	26,403	10,554	0	10,554	−74,463	−63,909
Tammen	SW-11	16,600	313	160	50,080	10,964	5,040	16,004	6,398	0	6,398	−91,726	−85,328
Sinclair-Prairie													
Scheurman	NE-5	3,000	354	160	56,640	12,401	911	13,312	5,321	1,218	4,103	154,252	158,355
Northern Natural Gas Co.													
Aylward													
Brack	SW-14	17,200	314	160	50,240	10,999	5,222	16,221	6,485	20,037	−13,552	−49,269	−62,821
Clay													
Bahr	SE-27	16,600	400	640	256,000	56,048	5,040	61,088	24,420	38,477	−14,057	337,548	323,491
Fees-Hoyt													
Schreiber	SW-17	30,200	347	640	222,080	48,622	9,169	57,791	23,101	42,623	−19,522	209,375	189,853
Hannum													
Dirks	SW-18	34,100	338	240	81,120	17,760	10,353	28,113	11,239	4,294	6,945	−74,825	−67,880
Skolout	NE-27	21,000	388	640	248,320	54,367	6,376	60,743	24,282	41,832	−17,550	218,223	200,673
Helmerich-Payne													
Krause	SE-18	25,100	345	160	55,200	12,085	7,621	19,706	7,878	4,649	3,229	−70,432	−67,203
Herndon													
Brack	NE-24	31,700	318	320	101,760	22,279	9,625	31,904	12,753	32,830	−20,077	54,772	34,695
Schneider	NW-18	66,100	336	320	107,520	23,540	20,069	43,609	17,432	27,379	−9,947	−68,575	−78,522
Kenwood													
Eitel	SE-14	10,300	316	160	50,560	11,070	3,127	14,197	5,675	115	5,560	−55,242	−49,682

[fol. 426]

Moss													
Mohr	SE-15	9,500	313	160	50,080	10,964	2,884	13,848	5,536	5,202	334	19,689	20,023
Schroyer	NW-12	51,000	324	160	51,840	11,350	15,484	26,834	10,727	14,863	−4,136	−44,038	−48,174
Morgan-Flynn													
Brack	NE-12	18,200	326	160	52,160	11,420	5,526	16,946	6,774	3,444	3,330	−62,103	−58,773
Budde	NE-16	5,100	319	160	51,040	11,175	1,548	12,723	5,086	0	5,086	−61,315	−56,229
Mauler	SE-12	51,900	331	160	52,960	11,595	15,757	27,352	10,934	2,090	8,844	−63,092	−54,248
Mohr	SW-10	24,650	312	160	49,920	10,929	7,484	18,413	7,361	18,587	−11,226	−[illegible]007	−59,233
Mohr-Butherus	NE-15	19,400	313	160	50,080	10,964	5,890	16,854	6,738	21,076	−14,338	−[illegible]047	−64,385
Rabon													
Cook	NW-28	14,000	368	160	58,880	12,891	4,251	17,142	6,852	0	6,852	−62,455	−55,603
Ford Est.	SW-7	35,500	334	320	106,880	23,400	10,778	34,178	13,663	24,711	−11,048	−48,765	−59,813

Ford Est.													
Schermerhorn													
Butherus	NW-15	18,700	311	160	49,760	10,895	5,678	16,573	6,625	9,705	−3,080	−47,900	−50,980
Hartman	NW-4	11,900	368	320	117,760	25,782	3,613	29,395	11,750	33,452	−21,702	−16,229	−37,931
Mauler	NE-14	22,100	320	160	51,200	11,210	6,710	17,920	7,164	3,264	3,900	−79,981	−76,081
Reidl	SE-13	27,300	333	160	53,280	11,665	8,289	19,954	7,975	2,602	5,373	−83,635	−78,262
Shell													
Schneider	NW-19	21,600	341	160	54,560	11,945	6,558	18,503	7,397	3,421	3,976	−101,661	−97,685
Stanolind													
Brack	SW-21	7,800	368	320	117,760	25,782	2,368	28,150	11,253	36,614	−25,361	−46,461	−71,822
Producers Gas Co.–Central Gas Utilities Co.													
Campbell													
Rabenseifner	NW-7	23,500	334	320	106,880	23,400	7,135	30,535	12,206	30,056	−17,850	50,622	32,772
Kenwood													
Arnold	SW-19	23,400	334	160	53,440	11,700	7,105	18,805	7,517	11,676	−4,159	−65,133	−69,292
Arnold	NW-30	12,200	332	300	99,600	21,806	3,704	25,510	10,197	13,464	−3,267	144,689	141,422
Bird	NE-33	8,900	452	160	72,320	15,834	2,702	18,536	7,409	15,224	−7,815	8,906	1,091
Brack	NE-21	14,000	357	320	114,240	25,012	4,251	29,263	11,697	1,238	10,459	135,705	146,164
Hunter	NE-29	8,700	368	430	158,240	34,645	2,641	37,286	14,905	32,941	−18,036	574,203	556,167
Morgan-Flynn													
Rubart	SE-24	10,600	327	160	52,320	11,455	3,218	14,673	5,866	20,390	−14,524	−9,580	−24,104
Ohio Oil Co.													
Bahr	NE-19	7,200	349	320	111,680	24,451	2,186	26,637	10,647	15,897	−5,250	170,093	164,8534
[fol. 427]													
Brack A	NW-20	65,500	352	640	225,280	49,322	19,887	69,209	27,666	82,014	−54,38	105,201	50,853
Brack G	SW-24	10,700	317	160	50,720	11,105	3,249	14,354	5,738	15,371	−9,633	30,388	20,755
Brack H	NW-21	18,100	358	480	171,840	37,622	5,495	43,117	17,236	43,373	−26,137	74,559	48,422
Dirks	NE-25	8,300	329	160	52,640	11,525	2,520	14,045	5,614	14,929	−9,315	17,385	8,070
Mauler	SW-12	58,200	325	320	104,000	22,770	17,670	40,440	16,166	0	16,166	−113,531	−97,365
Mohr a/c 2	NW-10	5,800	286	160	45,760	10,019	1,761	11,780	4,709	8,287	−3,578	308,339	304,761
Mohr a/c 1	NW-14	15,400	315	160	50,400	11,034	4,676	15,710	6,281	0	6,281	−321,261	−314,980
Mohr a/c 3	SW-15	8,550	315	160	50,400	11,034	2,596	13,630	5,450	6,107	−657	21,927	21,270
Skelly													
Bird	SE-28	5,100	426	160	68,160	14,923	1,548	16,471	6,584	7,457	−873	+40,066	−40,939
Totals		1,007,650		12,170	4,192,080	917,807	305,935	1,223,742	489,186	747,918	−392,091	2,685,038	2,455,876
											133,359	−2,079,992	−2,109,067
											−258,732	605,041	346,309



[fol. 428] EXHIBIT 64

Kansas State Corporation Commission Conservation Division

800 Bitting Building, Wichita, Kansas

Gas Proration Order and Report for Hugoton Field

For November, 1944

T. A. Morgan, Director

[fol. 429] BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Docket No. C-964, Conservation Division

In the matter of determining the market demand for natural gas for the Hugoton Gas Field of Kearny, Finney, Grant, Haskell, Morton, Stevens and Seward Counties, Kansas, the deliverability and acreage attributable to each of the respective wells therein, and fixing gas production percentages and quotas for wells within said field for the proration period extending from October 1, 1944, to March 31, 1945, both inclusive.

ORDER

Now on the 21st day of November, 1944, the above entitled matter comes on for consideration and determination upon the evidence heretofore introduced herein on September 26, 1944, at the hearing held at the Allis Hotel, Wichita, Kansas, and the Commission having heard the evidence and being fully advised in the premises, finds:

1. That after due and proper notice as provided by the statute the above entitled cause was heard by the Commission at Wichita, Kansas, on September 26, 1944, that evidence was taken and all parties afforded an opportunity to be heard.

2. That from the evidence it appears that the reasonable market demand for gas to be produced from the Hugoton Field in Kansas during the month of November, 1944, is 6,823,902 M.C.F.; that production in excess of said amount

would result in waste as that term is defined by the Statutes of the State of Kansas; that in order to prevent such waste, the production of natural gas from said common source of supply should be restricted and limited to the amount of the reasonable market demand; that during the month of October, 1944, certain wells accumulated overages in the amount of 250,962 M.C.F.; that in accordance with the provisions of the Basic Order heretofore entered herein, the same being Order No. 44-3-21, 250,962 M.C.F. of overage for the month of October, 1944, should be added to the November nominations, which will result in a gross allowable of 7,074,864 M.C.F.

3. That in order to protect the respective correlative rights of the producers and other interested parties having a right to withdraw gas from a common reservoir and in order to permit the wells and leases therein to currently produce proportionately so that each may ultimately produce approximately the amount of gas underlying it, production quotas for the several developed leases and wells should be established during said period in accordance with the Basic Order heretofore entered herein, the same being Order No. 44-3-21.

4. That the acreage attributable to, and the individual well deliverability factors of the several wells in said field are in the amounts and figures as set out in the November allowable report which is attached hereto marked Exhibit "A" and hereby referred to and made a part hereof by reference; that the allocation of the allowed production within and between the wells in said common source of supply and the individual well production quotas should be made and established in the manner and form prescribed in said Basic Order, the same being Order No. 44-3-21 issued herein, and when so made and established are in the amounts and figures as set out in said schedule, Exhibit "A."

[fol. 430] 5. Such allowables should constitute the maximum permissible production from such wells and leases for said period covered by this order.

It Is, Therefore, By The Commission Ordered: That the total allowed production of natural gas from the Hugoton Gas Field located in Kearny, Finney, Grant, Haskell, Morton, Stevens and Seward Counties, Kansas, for the month of November, 1944, be, and the same is hereby established at 6,823,902 M.C.F., and the same is hereby allocated among the several developed leases and wells in said field in the manner prescribed by the Basic Proration Order entered herein, the same being Order No. 44-3-21, and when so distributed, each well's production quota is in the amount set out in the schedule, Exhibit "A" attached hereto; that production of natural gas from said common source of supply and from each of the developed wells and leases therein shall be limited during the period covered hereby to the respective allowables established for the said field and each of the wells therein.

It Is Further Ordered: That the acreage factors and the deliverability factors of the wells as set out in the schedule, Exhibit "A," attached to this order, be, and the same are hereby adopted and established.

By The Commission It Is So Ordered.

Victor L. Kirk, Secretary. (Seal.)

[fol. 431]

EXPLANATION

Hugoton Field, November, 1944.

The allowables shown on Exhibit "A" are computed in accordance with Order # 44-3-21, the basic order for the Hugoton Field. The November gross allowable for each well is determined by multiplying the product of its deliverability and acreage factor by 13,3030295, the relationship of the total gross allowable for October to the sum of all of the deliverability-times-acreage-factor products.

The symbol # appearing in the gross allowable column opposite a well indicates that no deliverability test has been taken on the well. The symbol * indicates that no acreage plat has been received.

October net allowable	6,853,907	M.C.F.
October runs	7,104,869	M.C.F.
Over	250,962	M.C.F.
November nominations	6,823,902	M.C.F.
Add overage	250,962	M.C.F.
November gross allowable	7,074,864	M.C.F.

New Wells

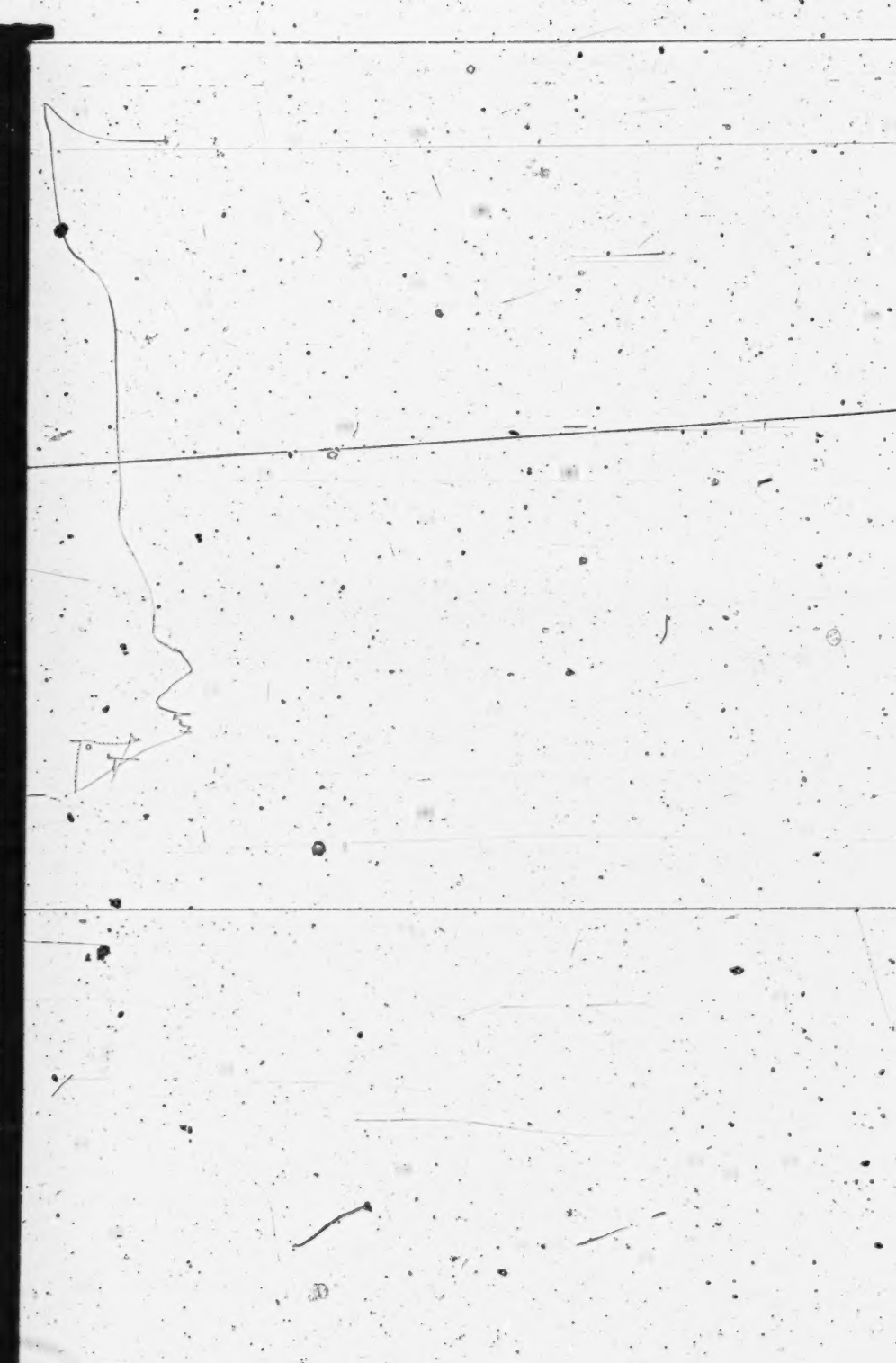
Neuner
Stevens # 1 Sec. 16-33-36
Del. 3,650 (640 acres) Eff. 10-24-44
P.E.P.L.
Miller # 1 Sec. 30-32-38
Del. 7,438 (640 acres) Eff. 10-25-44
Republic
Pottoroff # 1 Sec. 31-32-37
Del. 2,147 (640 acres) Eff. 10-23-44
Royalty Depositors
Henthorn # 1 Sec. 15-28-37
Del. 786 (640 acres) Eff. 10-24-44

Change in Acreage

P.E.P.L.
Phillips # 1 Sec. 1-34-38
640 acres Eff. 10-1-44
P.E.P.L.
Stone # 1 Sec. 34-32-39
640 acres Eff. 10-1-44

New Deliverability Standard Pressure is 311.6 pounds gauge.

State Corporation Commission, T. A. Morgan, Director, Conservation Division.



[fol. 432]

EXHIBIT "A"

Hugoton Field

November, 1944

All Volumes are Expressed in M.C.F.

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Central Gas Utilities Company											
Central Gas Util. Co.											
Leonard	1	28-31-38	394	640	4,955	146,528	76,164		70,364	64,565	134,929
McClure	1	34-31-38	381	640	5,288	241,596	0		206,712 (34,884)	68,904	275,616
Persinger	1	22-31-38	403	160	696	4,741	2,525		2,216	2,267	4,483
Schowalter	1	27-31-38	388	640	7,457	165,784	0		165,784	97,167	262,951
Sullivan	1	12-29-38	410	640	118	−3,443	930	4,373		1,538	−2,835
Liberal Gas Company											
Quinque Oil & Gas Co.											
Boles	1	3-35-34	386	480	127	−2,002	3,591	5,503		1,238	−4,265
Boles	2	3-35-34	380	480	207	−8,692	7,351	16,043		2,020	−14,023
Boles	3	2-35-34	382	480	223	−38,565	11,200	49,765		2,176	−47,589
Boles	4	4-35-34	391	160	230	−10,282	5,840	16,122		756	−15,366
Grover	6	35-34-34	406	640	133	1,015	3,614	2,599		1,733	−866
Lambertson	5	2-35-34	382	640	268	−18,207	9,180	27,387		3,492	−23,895
Northern Natural Gas Company											
Derry Oil Co.											
Warner	1	29-30-34	418	640	1,201	−8,162	19,194	27,356		15,649	−11,707
Helmerich & Payne											
Elliott	1	30-29-33	393	640	1,293	4,583	16,485	11,902		16,848	4,946
Jones	1	34-26-34	397	640	892					11,628	
Jones	2	36-26-35	412	640	1,113	33,615	24,821		8,794	14,503	34,925

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Kansas Natural Gas Co. (Fin-Ker)											
Campbell	1	32-25-35	389	640	1,933	14,764	16,329	1,565		25,188	23,623
Masonic Home	1	1-26-36	392	640	645	4,544	5,578	1,034		8,405	7,371
Masonic Home	2	6-26-35	394	640	427	2,374	3,277	903		5,564	4,661
Kuhn Bros.											
Carpenter	1	20-33-36	368	640	1,948					25,383	
Carpenter	2	28-33-36	365	640	1,058	−38,821	53,454	92,275		13,786	−45,027
Carpenter	3	29-33-36	362	640	620					8,079	
[fol. 433]											
Neuner											
Kuhn	1	29-32-36					975	975		#*	−975
Stevens	1	16-33-36	405	640	3,650	11,184	13,570	2,386		47,561	45,175
Northern Natural Gas Co.											
Albert	1	11-33-37		640		32,724	22,438		10,286	#	10,286
Albert	2	14-33-37		640		15,866	17,906	2,040		#	−2,040
Baker	1	24-32-37	381	640	2,375	53,266	36,512		16,574	30,947	47,701
Barber	1	14-33-36					4,323	4,323		#*	−4,323
Boles	1	26-32-35	384	640	704	−17,390	36,081	53,471		9,173	−44,298
Brown	1	16-25-34	390	640	2,423	60,618	30,680		29,938	31,572	61,510
Brown	2	20-25-34	376	640	2,390	16,631	30,511	13,880		31,142	17,262
Curry	1	2-33-37	377	640	1,485	3,997	23,014	19,017		19,350	333
Kenoyer	1	21-32-36	405	640	3,591	5,564	55,340	49,776		46,792	−2,984
Lightcap	1	36-32-37	375	640	2,464	26,539	30,871	4,332		32,107	27,775
Lightcap	2	11-33-36	411	640	1,796	13,906	28,811	14,905		23,402	8,497
Lightcap	3	2-33-36				−3,226	33,736	36,962		#*	−36,962
Lightcap	4	12-33-36				−2,296	25,522	27,818		#*	−27,818
Madden	1	1-33-37	374	640	2,282	33,917	28,161		5,756	29,735	35,491
Madden	2	2-33-37	372	640	1,809	34,437	22,829		11,608	23,572	35,180

Mann	1	1-33-36					967	967		#*	−967
Moorhead	1	31-32-36	384	635	2,066	536	31,841	31,305		26,712	−4,593
Mueller	1	15-33-36					6,525	6,525		#*	−6,525
Paden	1	24-33-37		640		2,010	11,380	9,370		#	−9,370
Republic Fee	1	23-32-37	391	640	1,698	−13,223	28,843	42,066		22,125	−19,941
Stewart	1	35-32-37	388	640	1,388	−10,101	23,062	33,163		18,086	−15,077
Swisher	1	1-33-37	373	640	1,626	16,161	21,447	5,286		21,187	15,901
Taylor	1	30-32-36	384	632	3,114	21,943	44,541	22,598		40,068	17,470
P.E.P.L. Co.											
Crawford	1	36-33-38	375	640	1,825	−6,354	18,041	24,395		23,780	−615
Crawford	1	31-33-37	394	640	719	8,325	11,459	3,134		9,369	6,235
Crawford	1	32-33-37	389	320	604	−13,414	6,480	19,894		3,935	−15,959
Greenwood	1	12-34-38	372	640	1,832	−4,869	15,978	20,847		23,872	3,025
Guyer	1	2-33-38	375	640	1,469	16,522	14,790		1,732	19,142	20,874
Ham-Gaskill	1	10-33-38	366	640	1,620	10,087	14,308	4,221		21,109	16,888
Kelley	1	15-34-38	372	320	3,389	−17,246	23,360	40,606		22,086	−18,520
Kelley	1-A	16-34-38	395	640	3,063	44,308	24,001		20,307	39,912	60,219
Loflin-Bane	1	1-33-38	374	640	1,763	−1,797	18,269	20,066		22,972	2,906
[fol. 434]											
Ramey	1	11-33-38	398	638	400	−102	4,424	4,526		5,199	673
Renfro	1	7-33-37	371	640	1,469	3,930	13,276	9,346		19,142	9,796
Spikes	1	2-33-38	371	640	1,119	−562	10,336	10,898		14,581	3,683
Stuart	1	12-34-38	376	160	2,608	−44,188	23,519	67,707		8,496	−59,211
Pioneer Petroleum Co.											
Williams	1	12-35-38		640		133,194	26,010		107,184	#	107,184
Republic Natural Gas Co.											
Armstrong	1	16-34-39	379	480	2,615	−13,549	7,061	20,610		25,552	4,942
Armstrong	2	4-34-39	379	480	1,872	80,848	23,190		54,885 (2,773)	18,295	73,180
Armstrong	3	3-34-39	368	480	3,016	114,296	21,429		92,867	29,475	122,342
Asher	1	7-35-37	390	640	1,648	91,820	13,528		64,422 (13,870)	21,474	85,896

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Barrows	1	32-34-38	405	560	1,340	9,466	12,302	2,836		15,285	12,449
Bunyan	1	23-33-37	383	640	1,637	42,298	24,455		17,843	21,331	39,174
Burrows	1	31-34-37	395	640	1,348	31,061	13,023		18,038	17,565	35,603
Burton	1	11-33-40	394	640	583	15,849	18,061	2,212		7,597	5,385
Carpenter	1	29-33-36	371	640	1,821	42,115	23,116		18,999	23,728	42,727
Chambers	1	25-33-40	394	640	901	−2,813	13,452	16,265		11,740	−4,525
Christopher	1	11-33-39	373	640	1,608	68,164	0		62,859 (5,305)	20,953	83,812
Christopher	2	10-33-39	372	640	2,456	50,504 (Cor)	16,148		34,356	32,002	66,358
Crawford	1	19-32-37	396	640	1,944	74,632	33,542		41,090	25,331	66,421
Davis	1	31-32-38	378	560	2,116	32,122	22,198		9,924	24,132	34,056
Dixon	1	18-34-39	389	560	218	14,680	1,627		7,467 (5,586)	2,489	9,956
Dorth	1	20-34-39	377	480	1,661	−11,375	15,826	27,201		16,236	−10,965
Dreibelbis	1	9-34-39	378	160	396	3,035	0		3,035	1,290	4,325
Dreibelbis	2	9-34-39	380	160	772	4,661	2,568		2,093	2,515	4,608
Erhard, H.	1	28-34-39	375	625	3,189	106,873	30,499		76,374	40,576	116,950
Erhard, J.	1	11-35-39	374	640	3,231	109,634	27,796		81,838	42,101	123,939
Ellis	1	12-33-38	387	460	234	8,360	4,324		4,036	2,189	6,225
Erwin	1	10-35-37	398	640	2,972	143,181	35,778		107,403	38,726	146,129
Forward	1	5-34-38	388	640	2,078	98,772	28,532		70,240	27,077	97,317
Garner	1	18-33-39	389	640	930	12,922	12,710		212	12,118	12,330
Gibbens	1	29-34-37	402	640	1,839	31,500	28,808		2,692	23,963	26,655
[fol. 435]											
Graber Fee	1	15-34-39	384	480	5,767	31,137	42,565	11,428		56,356	44,928
Greenwood	1	11-34-38	376	640	1,615	88,020	17,897		63,132 (6,991)	21,044	84,176
Gustason	1	29-32-38	386	640	3,324	143,864	44,578		99,286	43,313	142,599
Hamilton	1	15-35-38	388	640	1,715	95,264	21,944		67,041 (6,279)	22,347	89,388

Harrison	1	30-34-37	406	600	2,942	17,555	19,085	1,530		24,940	23,410
Hayward	1	9-34-39	385	480	3,481	47,255	37,313		9,942	34,022	43,964
Hayward	2	31-33-39	393	640	1,242	59,712	16,887		42,825	16,184	59,009
Headrick	1	9-35-37	393	640	1,597	77,774	21,993		55,781	20,809	76,590
Hershey	1	26-34-37	399	640	2,661	61,803	42,817		18,986	34,674	53,660
Hicks	1	12-34-39	379	640	1,586	93,008	20,027		61,998	20,666	82,664
									(10,983)		
Hoon	1	30-32-37	384	640	4,022	70,523	55,149		15,374	52,408	67,782
Jester	1	7-34-36	401	640	2,655	58,426	40,118		18,308	34,595	52,903
Johnson	1	13-35-39	400	560	620	5,234	8,725	3,491		7,075	3,584
Kuhn	1	15-33-37	389	640	1,598	22,387	22,848	461		20,822	20,361
Knier	1	27-34-37	389	640	188	20,236	3,665		7,350	2,450	9,800
									(9,221)		
Littell	1	24-34-40	385	640	1,460	−5,215	22,231	27,446		19,024	−8,422
Mangels, A. O.	1	4-33-39	378	640	1,359	104,600	22,661		53,124	17,708	70,832
									(28,815)		
Mangels, E.	1	20-33-39	378	640	2,940	116,284	23,377		92,907	38,309	131,216
Mangels, M.	1	6-34-39	384	640	888	35,262	11,183		24,079	11,571	35,650
Mangels, Wm.	2	4-34-39	371	480	3,875	96,817	21,464		75,353	37,866	113,219
Mitchell	1	18-35-37	384	640	3,112	164,000	37,497		121,650	40,550	162,200
									(4,853)		
Moore	1	18-35-38	405	640	891	10,021	10,128	107		11,610	11,503
Moorhead	1	17-32-37	394	640	1,763	45,956	27,576		18,380	22,972	41,352
Morgan	1	6-33-39	397	640	475	8,684	7,481		1,203	6,189	7,392
Olsen	1	1-32-38	399	625	1,671	63,542	26,805		36,737	21,265	58,002
Paden	1	19-33-36	369	640	1,214	39,145	15,618		23,527	15,819	39,346
Parker Est.	1	30-34-36	397	640	2,477	77,039	23,739		53,300	32,276	85,576
Parker Est.	2	31-34-36	403	640	1,708	67,087	27,906		39,181	22,256	61,437
Phillips	1	10-35-39	370	640	2,126	126,168	14,683		83,106	27,702	110,808
									(28,379)		

[fol. 436]

Ponder	1	10-32-38	376	640	2,478	48,391	25,994		22,397	32,289	54,686
Ponder	2	10-32-38	374	640	2,176	122,656	18,469		85,062	28,354	113,416
									(19,125)		
Porter, J. A.	1	9-32-37	402	640	1,385	44,437	22,039		22,398	18,047	40,445

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Porter, I.	1	27-32-37	396	640	1,569	57,391	25,237		32,154	20,445	52,599
Pottorff	1	31-32-37	398	640	2,147	7,398	6,586		812	27,976	28,788
Pride	1	25-33-37	384	640	2,156	40,434	33,387		7,047	28,093	35,140
Ratcliff	1	8-33-37	390	640	510	16,021	8,935		7,086	6,645	13,731
Ratcliff	2	8-33-37	395	640	156	5,356	2,723		2,633	2,033	4,666
Ratcliff	3	8-33-37	398	640	194	3,534	3,056		478	2,528	3,006
Ratcliff	4	26-32-38	388	640	1,634	31,051	21,944		9,107	21,292	30,399
Ratcliff Fee	1	7-34-38	382	160	114	2,944	353		1,134 (1,457)	378	1,512
Ratcliff Fee	2	7-34-38	396	160	339	−266	1,251	1,517		1,108	−409
Ratcliff Fee	3	7-34-38	377	510	1,273	54,879	15,499		39,380	13,213	52,593
Ridpath	1	27-34-37	403	640	442	21,805	5,913		15,892	5,759	21,651
Roach	1	34-32-38	387	510	1,927	37,782	26,818		10,964	20,015	30,979
Rolla St. Bk.	1	8-34-39	384	480	1,143	12,059	14,077	2,018		11,167	9,149
Schaeffer, K.	1	6-35-38	396	640	1,160	42,408	14,061		28,347	15,115	43,462
Shafer	1	5-33-38	382	640	935	56,624	12,080		36,549 (7,995)	12,183	48,732
Sherwood	1	33-33-37	387	640	2,994	90,489	45,844		44,645	39,013	83,658
Sherwood	2	33-33-37	389	620	1,708	36,823	25,170		11,653	21,565	33,218
Sibon	1	2-34-39	367	480	1,816	86,264	15,204		53,241 (17,819)	17,747	70,988
Smith	1	13-33-37	389	640	1,886	18,140	21,103	2,963		24,575	21,612
States	1	20-32-38	386	640	2,961	136,868	44,243		92,625	38,583	131,208
Stone	1	3-33-39	366	320	1,995	23,489 (Cor)	11,063		12,426	13,004	25,430
Sullivan, D.	1	34-32-39	381	320	1,791	19,882	20,336	454		11,675	11,221
Sullivan, W. H.	1	29-34-39	390	640	977	6,137	9,286	3,149		12,731	9,582
Thompson, E. A.	1	18-34-39	388	560	759	9,148	10,942	1,794		8,652	6,858
Thompson, F. A.	1	7-34-39	390	320	390	1,739	3,572	1,833		2,541	708
Tillett	1	21-34-39	379	480	2,934	27,138	22,017		5,121	28,680	33,801
Wagner	1	17-33-38	386	640	1,254	65,748	17,895		47,853	16,340	64,193
Watson	1	27-34-40	404	640	309	40,424	3,262		12,078 (25,084)	4,026	16,104

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Webber	1	12-32-38	387	640	1,141	46,715	16,105		30,610	11,868	45,478
Webber	2	9-33-37	392	640	1,802	40,914	30,453		10,461	23,481	33,942
West	1	31-34-38	408	160	411	3,186	4,848	1,712		1,342	−370
Wiley	1	4-35-37	396	640	1,807	14,778	16,782	2,004		23,546	21,542
W.R.D.	1	21-32-38	384	640	4,861	135,576	50,998		84,578	63,340	147,918
W.R.D.	2	26-32-38	393	620	2,613	113,819	16,546		97,273	32,980	130,253
W.R.D.	3	24-32-38	403	640	1,269	84,250	21,753		49,605	16,535	66,140
									(12,892)		
W.R.D.	4	6-33-36	390	640	2,307	71,196	31,048		40,148	30,061	70,209
Stevens Co. O. & G. Co.											
Kelley	1	15-34-38	377	640	2,789	34,779	24,543		10,236	36,341	46,577
United Prod. Co.											
Beardsley	1	12-31-35	399	640	591	402	9,343	8,941		7,701	−1,240
Young	1	5-31-34	393	640	513	14,822	5,390		9,432	6,685	16,117

Panhandle Eastern Pipe Line Co.

Benedum-Trees Oil Co.											
Brecheisen	1	3-35-38	405	160	568	−18,162	0	18,162		1,850	−16,312
Grandy	1	3-35-38	396	160	1,114	−13,489	0	13,489		3,635	−9,854
Kramer	1	2-35-39	380	320	883	4,393	5,723	1,330		5,759	4,429
Lowry	1	4-35-38	399	160	701	−15,344	0	15,344		2,280	−13,064
Meyers	1	10-35-38	393	160	788	−16,109	0	16,109		2,567	−13,542
Meyers, B.	1	27-34-39	384	160	1,040	−10,107	0	10,107		3,388	−6,719
Mitchell	1	3-35-38	398	160	932	−19,744	0	19,744		3,036	−16,708
Columbian Fuel Corp.											
Alderman	1	18-29-35	390	640	944	−15,930	25,387	41,317		12,301	−29,016
Bass, A.	1	7-29-36	399	640	1,981	15,237	42,064	26,827		25,813	−1,014
Bass, C.	1	8-29-36	394	640	2,064	27,587	42,461	14,874		26,895	12,021
English	A-1	2-29-36	403	593	1,602	−18,464	34,984	53,448		19,337	−34,111
Gray	A-1	3-29-35	391	640	970	−14,774	22,632	37,406		12,639	−24,767
Hickok	1	9-29-36	388	640	1,361	22,290	28,674	6,384		17,734	11,350
Johnson	1	11-29-36	398	640	2,851	31,839	65,077	33,238		37,149	3,911
Kennedy	1	10-29-36	389	640	3,101	57,844	63,952	6,108		40,407	34,299
Maxwell	1	4-29-36	393	640	1,697	13,091	34,169	21,078		22,112	1,034
Smith	1	35-28-36	389	640	1,082	−15,246	29,210	44,456		14,099	−30,357
Kinney Coastal Oil Co.											
Baldridge	1	10-35-39	372	320	2,649	−22,931	31,416	54,347		17,265	−37,082

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Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Kinney Coastal Oil Co. & Kuhn Bros.											
Curtis	1	25-31-39	405	640	2,606	54,790	6,711		48,079	33,957	82,036
Kuhn Bros.											
Armstrong	1	16-34-39	373	600	2,040	−3,806	38,223	42,029		24,927	−17,102
Kendall	1	33-34-39	373	640	1,965	6,366	35,450	29,084		25,605	−3,479
Light	1	33-33-39	370	640	1,923	20,324	25,404	5,080		25,057	19,977
Nix	1	2-34-39	361	640	2,239	46,127	24,094		22,033	29,175	51,208
Young	1	14-34-39	384	640	443	−14,855	0	14,855		5,772	−9,083
Younggren	1	1-32-39	394	640	4,577	85,612	50,875		34,737	59,640	94,377
McKnab O. & G. Co.											
Hallock	1	36-33-39	369	320	829	−6,999	3,526	9,925		5,408	−4,517
P.E.P.L. Co.											
Armstrong	1	25-32-39	385	640	3,920	81,475	51,077		30,398	51,079	81,477
Cavner	1	33-31-38	374	640	615	2,005	12,453	10,448		8,014	−2,434
Dyck	1	23-28-38				#	7,533	7,533		#	−7,533
Howell	1	16-29-36	389	640	3,095	17,664	39,722	22,058		40,329	18,271
Howell-Rhinehart	1	22-32-39	392	640	3,917	39,668	44,823	5,155		51,040	45,885
Howell-Rhinehart	1	23-32-39	384	640	1,260	−6,262	0	6,262		16,418	10,156
Hull	1	34-32-39	369	640	2,491	−6,333	24,528	30,861		32,458	1,597
Ill. Bks. Life	1	17-29-36	401	640	1,654	7,498	23,775	16,277		21,552	5,275
Moorhead	1	6-34-37	375	640	2,704	−32,363	8,880	41,243		35,234	−6,009
Kilgore	1	17-31-38	422	640	1,522	1,378	0		1,378	19,832	21,210
Kuhn	1	12-28-37				#	6,293	6,293		#	−6,293
Liberty Life	1	28-33-37	375	640	2,395	264	9,866	9,602		31,208	−21,606
Light	1	2-32-38	384	640	2,162	−1,784	36,529	38,313		28,171	−10,142
McClelland	1	36-30-35	387	640	1,354	−22,360	0	22,360		17,643	−4,717
McClure	1	34-31-38	373	640	2,724	131,400	48,333		83,067	35,495	118,562
Miller	1	30-32-38	382	640	7,438	19,943	21,190	1,247		96,919	95,672
Morgan	1	27-33-39	366	640	2,081	41,345	24,139		17,206	27,116	44,322
Morgan	1	35-33-39	363	640	3,344	118,358	43,025		75,333	43,573	118,906
Neese	1	30-30-37	417	640	2,054	−13,882	18,806	32,688		26,764	−5,924
Newby	1	27-31-37	402	640	632	883	8,785	7,902		8,235	333
Nix	1	3-34-39	361	640	3,716	186,020	36,009		145,263 (4,748)	48,421	136,984

Nix	1	3-34-39	361	640	3,716	186,020	36,009		145,263 (4,748)	48,421	136,984	
Phillips	1	1-34-38	363	640	2,808	36,384 (Cor)	42,380	5,996		36,589	30,593	
Riverview St. Bk	1	16-30-35	388	640	590	−10,159	0	10,159		7,688	−2,471	
Shirley	1	2-34-38	364	640	2,212	51,440	36,516		14,924	28,823	43,747	
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Simmons	1	16-32-39	389	640	1,009	−12,840	0	12,840		13,148	308	
Spikes	1	20-31-38	386	640	3,354	75,414	46,967		28,447	43,704	72,151	
Stecher	1	26-32-39	379	640	4,203	154,447	48,624		105,823	54,766	160,589	
Stevesson	1	24-29-36	394	640	525	−22,144	12,414	34,558		6,841	−27,717	
Stone	1	34-32-39	366	640	2,830	54,951 (Cor)	30,164		24,787	36,876	61,663	
Taggart	1	11-30-37	407	640	880	−49,871	8,461	58,332		11,467	−46,865	
Vanselous	1	2-32-39	408	640	3,877	8,506	0		8,506	50,518	59,024	
Younggren	1	8-32-38	383	640	1,882	36,203	26,952		9,251	24,523	33,774	
Younggren	1	11-32-39	402	640	2,405	39,515	37,607		1,908	31,338	33,246	
Younggren	1	18-32-38	380	640	3,239	115,398	37,635		77,763	42,205	119,968	
Younggren	1	24-32-39	380	640	1,364	37,235	24,942		12,293	17,773	30,066	
Younggren	1	32-32-38	365	640	1,272	23,378	19,045		4,333	16,575	20,908	
Zimmerman	1	35-31-38	382	640	1,783	11,112	31,186	20,074		23,233	3,159	
P.E.P.L. Co. & Dunne-Hoffman												
Dunne-Hoffman	1	5-34-37	378	640	2,655	−25,933	39,289	65,222		34,595	−30,627	
Dunne-Hoffman	1	8-34-37	374	640	1,811	−34,874	37,313	72,187		23,598	−48,589	
Dunne-Hoffman	1	7-34-37	384	640	2,361	53,858	31,682		22,176	30,765	52,941	
P.E.P.L. Co. & McKnab O. & G. Co.												
Crawford	1	34-32-38	384	480	950	−10,669	4,539	15,208		9,291	5,917	
Gracey	1	15-33-38	381	160	2,171	−70,865	7,770	78,635		7,075	−71,560	
Ham	1	3-33-38	380	320	1,273	−19,508	5,453	24,961		8,300	−16,661	
Hamilton	1	16-33-38	382	480	1,204	−1,395	17,114	18,509		11,766	−6,743	
P.E.P.L. Co. & Saturn O. & G. Co.												
Bane	1	19-33-38	368	320	1,185	−13,718	4,202	17,920		7,727	−10,193	
Buddenberg	1	26-33-39	360	640	3,323	67,353	46,956		20,397	43,300	63,697	
Costley	1	32-33-38	383	640	1,367	11,251	26,727	15,476		17,812	2,336	
Dappert	1	28-30-37	389	640	1,332	−9,282	14,232	23,514		17,356	−6,158	
Greening	1	6-35-39	392	640	2,435	81,709	19,872		61,837	31,729	93,566	

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Gregory	1	13-33-39	360	560	3,520	37,502	36,142		1,360	40,133	41,493
Gregory	1	18-33-39	378	320	644	−17,569	3,049	20,618		4,196	−16,422
Gregory	1	19-33-38	367	320	1,211	−24,300	5,228	29,528		7,896	−21,632
Gregory	1	30-33-38	364	640	3,587	21,464	41,944	20,480		46,740	26,260
Gregory	1	31-33-38	356	560	1,704	6,105	27,734	21,629		19,428	−2,201
Joyce	1	33-30-37	388	640	2,300	27,413	38,530	11,117		29,970	18,853
Joyce	1	26-30-37	378	640	1,903	−5,740	30,663	36,403		24,797	−11,606
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Light	1	23-33-39	366	640	1,877	−12,496	5,532	18,028		24,458	6,430
Mason	1	8-31-37	392	640	981	−31,565	7,703	39,268		12,783	−26,485
McCandless	1	35-30-37	370	560	1,842	−38,618	12,864	51,482		21,005	−30,477
McClaren	1	15-29-36	397	640	1,563	−2,099	27,491	29,590		20,366	−9,224
McClure	1	4-32-38	366	640	2,243	44,639	35,944		8,695	29,227	37,922
Parsons	1	3-31-37	360	640	1,212	−48,345	7,763	56,108		15,793	−40,315
Parsons	1	4-31-37	372	640	1,476	−34,279	23,449	57,728		19,233	−38,495
Parsons	1	9-31-37	372	640	3,359	19,728	82,402	62,674		43,769	−18,905
Parsons	1	25-30-37	383	640	1,342	−30,112	8,458	38,570		17,487	−21,083
Parsons	1	34-30-37	365	640	3,626	−33,942	51,144	85,086		47,248	−37,838
Phillips	1	9-35-39	367	640	2,980	28,095	24,828		3,267	38,830	42,097
Phillips	1	16-35-39	381	480	618	4,896	14,366	9,470		6,046	−3,424
Rickart	1	5-35-39	387	640	599	−4,483	9,869	14,352		7,805	−6,547
Rickart	1	8-35-39	368	480	878	64,888	10,380		25,761 (28,747)	8,587	34,348
Sharp	1	36-32-39	373	640	4,031	122,560	42,217		80,343	52,525	132,868
Towler	1	20-30-37	396	640	1,211	−14,803	24,408	39,211		15,780	−23,431
Towler	1	21-30-37	385	640	893	−9,463	15,272	24,737		11,636	−13,099
Towler	1	26-30-37	366	640	1,436	−13,099	6,462	19,561		5,681	−13,880
Parish, F. P.											
Bohnstengel	1	16-28-37		640		−2,405	6,741	9,146		#	−9,146
Burnham	1	18-28-37	375	602	731	−11,216	0	11,216		8,965	−2,251
Grant Co. St. Bk.	1	20-28-37	376	640	1,024	−20,440	9,911	30,331		13,343	−17,008
Sullivan	1	26-28-37	393	640	2,160	1,265	45,775	44,510		28,145	−16,365
Whitson	1	17-28-37		640		28,490	25,505		2,985	#	2,985

Sullivan	1	20-28-37	396	640	2,166	1,265	45,775	44,510			28,145	−16,365
Whitson	1	17-28-37		640		28,490	25,505		2,985			2,985
Pioneer Pet. Co.												
Beavers	1	1-35-38	390	480	3,499	45,191	38,911		6,280		34,191	40,471
Dunne	1	16-35-38	380	480	2,732	220	40,611	40,391			26,699	−13,692
Morris	1	29-34-38	394	640	2,067	75,225	20,115		55,110		26,934	82,044
Sidwell												
Jenkins	1	10-34-39	378	160	2,730	−47,427	0	47,427			8,900	−38,527
Snare	1	9-34-39	382	160	2,422	−26,050	0	26,050			7,896	−18,154
Stevens Co. O. & G. Co.												
Beavers	1	23-34-38	374	640	1,283	5,292	20,511	15,219			16,718	1,499
Brown	1	27-34-38	405	160	5,574	−87,435	0	87,435			18,164	−69,271
Brubaker	1	34-33-37	378	640	2,063	1,786	28,919	27,133			26,881	−252
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Burrows	1	22-34-38	387	640	1,005	8,748	16,372	7,624			13,095	5,471
Finch	1	13-34-38	394	160	1,585	−29,110	0	29,110			5,160	−23,950
Leonard	1	3-32-38	371	640	1,945	21,940	33,037	11,097			25,344	14,247
McClure	1	16-32-38	377	640	2,507	50,555	29,426		21,129		32,667	53,796
Palmer	1	34-31-39	396	640	1,386	17,449	19,278	1,829			18,060	16,231
Slease	1	35-33-39	368	160	3,127	−53,964	0	53,964			10,190	−43,774
Smith	1	25-31-39	403	640	4,348	130,646	46,934		83,712		56,656	140,368
Spikes	1	4-34-37	391	320	2,251	−36,102	9,410	45,512			14,672	−30,840
Spikes	1	21-31-38	396	600	1,487	40,023	21,787		18,236		18,164	36,400
Young	1	11-34-39	377	160	2,406	−14,333	0	14,333			7,844	−6,489
Sullivan, M. J.												
Stevens	1	13-30-35	382	640	482	−17,574	0	17,574			6,281	−11,293
Royalty Depositors Corp.												
Henthorn	1	15-28-37	395	640	786	84,492 (Cor)	0		84,492		10,242	94,734
United Prod. Co.												
Central Life	1	7-31-34	386	640	614	−45,087	0	45,087			8,001	−37,086
Christian	1	16-30-36	397	560	1,051	−25,130	0	25,130			11,988	−13,142
Christopher	1	14-33-39	366	620	1,691	13,560	8,822		4,738		21,344	26,082

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Christopher	2	13-33-39	363	620	2,454	60,629	30,330		30,299	30,973	61,272
Christopher	3	11-33-39	365	620	2,503	40,839	34,363		6,476	31,598	38,074
Christopher	4	2-33-39	369	620	1,438	13,674	22,824	9,150		18,151	9,001
Curtis-Blake	1	21-30-36	390	640	446	−20,824	0	20,824		5,811	−15,013
Gregory	1	1-33-39	371	640	2,898	17,503	7,725		9,778	37,762	47,540
Julian	1	26-30-35	387	640	636	−49,504	0	49,504		8,287	−41,217
Miller	1	24-31-39	364	640	2,355	22,567	28,416	5,849		30,686	24,837
Pinney	1	27-30-36	385	640	765	−421	0	421		9,968	9,547
Reed	1	1-30-35	388	640	1,052	−66,306	0	66,306		13,708	−52,598
Rogers	1	24-30-35	391	640	538	−27,186	0	27,186		7,010	−20,176
Taylor	1	2-30-35	378	640	459	−9,452	0	9,452		5,981	−3,471
Winters	1	13-31-35	377	640	528	−34,361	0	34,361		6,880	−27,481
Wilson, R. K.											
Helmley	1	22-28-37	373	640	1,080	−24,749	8,756	33,505		14,073	−19,432
Patterson	1	25-28-37	374	640	1,261	−15,839	19,688	35,527		16,431	−19,096
Sledd Farm	1	12-28-37	380	640	913)					11,897)	
Sledd Farm	2	11-28-37	387	640	1,361)	−26,246	38,421	64,667		17,734)	−35,036
Smith	1	36-28-37	399	640	1,926	−31,585	17,147	48,732		25,096	−23,636

[fol. 442]

Peerless Carbon Black Co.

Columbian Fuel Corp.											
Baughman	1	28-28-36	400	640	2,280	98,804	19,797		79,007	29,709	108,716
English	B-1	3-29-36	398	640	1,266	14,161	15,277	1,116		16,496	15,380
Hall	A-1	33-28-36	399	640	1,239	52,348	12,389		39,959	16,144	56,103
Hall	B-1	31-28-36	387	640	465	12,861	4,028		8,833	6,059	14,892
Hampton	1	32-28-36	396	640	545	57,364	8,662		21,303	7,101	28,404
									(27,399)		
McCall	A-1	21-28-36	386	640	1,274	34,259	14,797		19,462	16,601	36,063
McCall	B-1	27-28-36	395	640	2,383	107,356	21,091		86,265	31,051	117,316
Webster	1	34-28-36	388	640	741	8,556	7,238		1,318	9,655	10,973

Tri-County Gas Co.

Beach, Ross											
Frost	1	5-25-35	406	640	3,179	43,800	19,316		24,484	41,423	65,907
Wagner	1	1-25-35	386	640	1,324	4,784	13,479	8,695		17,252	8,557
Fin-Ker O. & G. Prod. Co.											
Campbell	2	7-25-35	402	640	2,005	77,048	17,454		59,594	26,126	85,720
Campbell	3	19-25-35	412	640	1,885	63,126	22,265		40,861	24,562	65,423
Campbell	4	6-25-35	403	640	1,716	58,364	14,914		43,450	22,360	65,810
Campbell	5	19-24-35	416	584	4,154	158,992	42,921		116,071	49,398	165,469
Campbell	6	7-25-35	405	640	1,685	67,685	17,625		50,060	21,956	72,016
Campbell	7	13-25-36				−19,937	26,794	46,731		#	−46,731
Campbell	8	24-25-35				−18,632	30,673	49,305		#	−49,305
Campbell	9	29-25-35				#	17,460	17,460		#	−17,460
Campbell	10	30-25-35				#	13,214	13,214		#	−13,214
Campbell	11	23-25-35				#	3,052	3,052		#	−3,052
Hamlin	1	31-24-34	381	640	2,01[illegible]	14,900	12,828		2,072	26,243	28,315
Hamlin	2	30-24-34	381	640	1,940	−24,591	17,077	41,668		25,279	−16,389
Hamlin	3	25-24-35	378	640	1,612	17,161	15,333		1,828	14,490	16,318
Hamlin	4	36-24-35	377	640	1,502	25,338	14,819		10,519	19,571	30,090
Kriete	1	35-24-35	390	640	1,227	13,569	12,029		1,540	15,988	17,528
McKey	1	34-24-35	392	640	1,723	18,692	18,586		106	22,451	22,557
McCue	1	1-25-35				−34,686	46,628	81,314		#	−81,314
Ritchey	1	32-24-35				−68,221	27,354	95,575		#	−95,575
Tate	1	22-25-35	405	640	2,288	25,266	17,408		7,858	29,813	37,671

[fol. 443]

Producer Lease	Well No.	Description	Pressure	Acreage	Del.	October Net Allow.	Oct. Runs	Over	Short	November Gross Allow.	November Net Allow.
Kansas-Nebraska Nat. Gas. Co.											
Layman	1	13-24-34	389	640	1,223	69,352	0		47,808 (21,544)	15,936	63,744
Kansas Natural Gas Co.											
Spratt	1	31-24-34		640		−3,809	0	3,809		#	−3,809
					United Carbon Company						
United Prod. Co.											
Blackwelder	1	24-29-35	356	640	569	−86,815	19,008	105,823		7,414	−98,409
Blackwelder	2	23-29-35	366	640	584	−111,353	14,802	126,155		7,610	−118,545
Collingwood	1	30-29-34	351	640	518	−76,726	31,083	107,809		6,750	−101,059
Cummings	1	25-29-35	359	640	598	−49,269	7,045	56,314		7,792	−48,522
Eldridge	1	26-29-35	365	640	582	−63,354	18,957	82,311		7,584	−74,727
Hall	1	28-29-34	386	640	728	−44,282	28,414	72,696		9,486	−63,210
Harper	1	32-29-34	377	640	853	−45,845	15,297	61,142		11,115	−50,027
Huxman	1	27-29-34	385	640	878	−125,854	38,210	164,064		11,441	−152,623
Ill. Bks. Life	1	31-29-34	364	640	2,129	118,241	50,818		67,423	27,741	95,164
King	1	22-29-35	405	640	422	−35,256	9,556	44,812		5,499	−39,313
Lighty	1	11-30-35	373	640	637	−91,582	19,311	110,893		8,300	−102,593
Lighty	2	14-30-35	365	640	428	−54,401	15,514	69,915		5,577	−64,338
Lowe	1	35-29-35	363	640	665	−79,132	23,114	102,246		8,665	−93,581
Moesbarger	1	32-29-34	394	640	406	−59,245	18,769	78,014		5,290	−72,724
Moesbarger	2	22-29-34	383	640	1,020	−108,790	42,254	151,044		13,291	−137,753
Poncetti	1	19-29-34	362	640	514	−67,352	30,793	98,145		6,698	−91,447
Ray	1	21-29-34	357	640	706	−86,160	36,036	122,196		9,199	−112,997
Rooney	1	5-30-34	372	640	479	−36,321 (Cor)	14,955	51,276		6,241	−45,035
Roy	1	29-29-34	394	640	1,330	−117,918	60,776	178,694		17,330	−161,364
Roy	2	20-29-34	370	640	745	−90,398	36,264	126,662		9,708	−116,954

Schwertfeger	1	36-39-35	377	640	863	−110,686	28,760	139,446		11,245	−128,201
Stewart	1	27-29-35	367	640	253	−20,417	10,601	31,018		3,297	−27,721
Stevens	1	7-30-34	406	640	2,150	−10,514	31,821	42,335		28,015	−14,320
Threlkeld	1	6-30-34	409	640	1,569	−69,341	30,986	100,327		20,445	−79,882
Truesdale	1	12-30-35	384	640	903	−29,498	22,119	51,617		11,766	−39,851
Unconnected Wells											
Benedum-Trees											
Beaver	1	11-35-38		320	789	38,079	0		38,079	5,147	43,226
Ferguson	1	5-35-38		640	586	56,514	0		56,514	7,636	64,150
Hamilton	1	10-35-38		480	404	29,221	0		29,221	3,948	33,169
[fol. 444]											
Mitchell	2	2-35-38		640	444	42,903	0		42,903	5,785	48,688
Morris	1	33-34-38		486	394	28,819	0		28,819	3,896	32,715
Watkins	1	34-34-38		640	691	66,641	0		66,641	9,003	75,644
Wheeler	1	35-34-38		640	522	50,342	0		50,342	6,802	57,144
Helmerich-Payne											
Hyde	1	14-31-34		640	113	10,900	0		10,900	1,472	12,372
Kuhn Bros.											
Neilson	1	21-28-32		640	853	82,263	0		82,263	11,114	93,377
Parker, Orville											
Crawford	1	30-33-37		640	1,456	140,414	0		140,414	18,971	159,385
Totals	367				589,570	6,853,907	7,104,869	6,588,331	6,012,620 (324,749)	7,074,864	6,499,153

[fol. 445] EXHIBIT No. 61

Petroleum Administration for War
Washington

PAO No. 11, C-676, Jun 30 1943.

Mr. George H. Baird, Cities Service Gas Co., Masonic Empire Building, Bartlesville, Oklahoma.

MY DEAR MR. BAIRD:

Your application, dated April 24, 1943, as amended by your supplemental plat dated June 17, 1943, for authorization to use material pursuant to paragraph (c) (10) of Petroleum Administrative Order No. 11 has been considered by the Petroleum Administration for War.

It has been determined that the use of material required (1) to drill, equip and/or connect wells listed below, and (2) to install gathering facilities using pipe of the sizes indicated and in locations designated on your plat dated June 17, 1943, but only to the extent required to reach the wells listed below, all in Texas County, Oklahoma, is necessary and appropriate in the public interest and to the promotion of the war program.

Wells to be drilled, equipped and connected

Sections 3, 8, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, Township 5 North, Range 15 East; Sections 17, 18, 19, Township 5 North, Range 16 East; Sections 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, Township [fol. 446] 4 North Range 15 East; Sections 13, 24, Township 4 North, Range 14 East.

Wells previously authorized and to be connected only

Sections 32, Township 6 North, Range 15 East; Sections 6, 7, 14, 16, 31, 35, Township 5 North, Range 15 East; Section 20, Township 5 North, Range 16 East, Sections 9, 11, 19, 24, Township 4 North, Range 15 East.

You are hereby authorized to use the material required for the proposed operations, provided that:

(1) The proposed compressor station is located in Section 28, Township 5 North, Range 15 East, and

(2) All wells to be drilled shall be in the approximate center of 640-acre drilling units in which all

property interests are consolidated with each other, and

(3) pipe line connections are completed with Republic Natural Gas Company for delivery of the balance of immediate requirements at a point near the southeast corner of Section 1, Township 5 North, Range 14 East, and any other desirable point where pipe lines of both companies may intersect each other, and

(4) any casing which is to be used in the production string and which is not now in existing stocks shall be 7-inch O.D. with a nominal weight of 20 pounds per foot, and

(5) the wells in locations listed below shall be connected to lines of the Republic Natural Gas Company: [fol. 447] Section 20, Township 6 North, Range 16 East; Section 27, Township 6 North, Range 15 East: Section 12, Township 4 North, Range 14 East:

This authorization extends to any and all interests in any 640-acre drilling unit underlying locations here-in-above designated. In all other respects your application is denied.

Sincerely yours, Ralph K. Davies, Deputy Petroleum Administrator.

[fol. 448] Petroleum Adminsitration for War
Washington

May 3-1943

Mr. Alfred Hurlburt, Vice President,
Republic Natural Gas Company,
1505 Federal Street,
Dallas, Texas.

MY DEAR MR. HURLBURT:

The Republic Natural Gas Company has made application, Case No. C-640, to drill eight gas wells in the Hugoton field, Texas County, Oklahoma. It is stated that drilling of these wells will increase the supply of gas necessary to furnish future increased requirements of the Northern Natural Gas Company and to begin development of a supply for markets in the eastern Kansas and western Missouri area.

There are at present, a number of unconnected wells adjacent to the pipe lines of Republic which would be connected to increase gas supply. Connections must be provided for these wells in order to permit them to contribute their proportionate share of production before additional wells are drilled to increase the gas supply for Republic.

We request that you submit a proposal for connecting presently unconnected gas wells which are within a reasonable distance of Republic's pipe lines, showing material requirements for each such connection.

We will withhold further consideration of your current application pending receipt of your proposal for connecting these wells.

Sincerely yours, E. H. Poe, Director, Natural Gas and Natural Gasoline Division. (Seal.)

[fol. 449] July 3, 1943.

Mr. E. H. Poe, Director,
Natural Gas and Natural Gasoline Division,
Petroleum Administration for War,
7314 New Interior Building,
Washington, D. C.

Re: Case No. C-640.

Dear Mr. Poe:

Under date of April 1, 1943, we filed with your division application for exception, in accordance with the provisions of Petroleum Administrative Order No. 11, to drill eight wells in the Hugoton Gas Field, Texas County, Oklahoma. This application was assigned Case Number C-640 under date of April 6, 1943.

We desire to withdraw the said C-640 application and file the new application hereto attached. This conforms with the new Oklahoma proportion order as to sectional units, and also we have been able to make certain exchange of acreage that affords us locations near our gathering system requiring much less pipe to connect the wells.

We call special attention and ask special action on Units 7 and 8 in the application as some of the leases in these units expire in September, 1943. We have been unable to get these leases renewed or extended and the loss of same

would be very great as they are in a highly productive area and close to our pipe line.

Yours very truly, Republic Natural Gas Company.
By Alfred Hurlburt, Vice-President.

RJW:re Attachment. cc Mr. Seth Herndon, Director District No. 2, Petroleum Administration for War, Beacon Building, Tulsa, Oklahoma.

[fol. 450] Petroleum Administration for War
Washington

Answered Jul 16 1943 Jul 8-1943 WHW

Republic Natural Gas Company,
1505 Federal Street,
Dallas, Texas.

GENTLEMEN:

This will acknowledge receipt of your application, dated July 3, 1943, for exception in accordance with provisions of Petroleum Administrative Order No. 11 to drill eight wells in Texas County, Oklahoma. This application has been assigned Case No. C-779.

Under date of May 3, 1943, you were advised by this office that unconnected wells adjacent to the pipe lines of Republic Natural Gas Company must be connected to your system to permit those wells to contribute their proportionate share of production. We requested that you submit a proposal for connecting these unconnected wells which are within a reasonable distance of your pipe lines, and advised you that applications of Republic to drill wells in the Hugoton field could not be considered until an arrangement to connect unconnected wells had been completed. For this reason, we will withhold further consideration of the above-mentioned application pending receipt of such a proposal.

In accordance with your request of July 3, 1943, we are withdrawing your application, Case No. C-640, and no action will be taken thereon.

Sincerely yours, E. H. Poe, Director, Natural Gas and Natural Gasoline Division. (Seal.)

[fol. 451] Petroleum Administration for War
410 Beacon Building
Tulsa, Oklahoma

July 9, 1943.

Republic Natural Gas Company
1505 Federal Street
Dallas, 1, Texas

GENTLEMEN:

Subject: Application for Exception to Petroleum Administration Order No. 11 PAW form 3, District Two Case No. Oklahoma C-109. To Drill 8 Wells in Sections 1, 17, 19, 24, 25 and 35 Townships 4, 5, and 6 North Ranges 14 and 15 East Hugoton Field, Texas County, Oklahoma.

Your above described application has been received and analyzed. Two copies of report of examination have been forwarded this date to Mr. E. H. Poe, Director, Natural Gas and Natural Gasoline Division, Petroleum Administration for War, South Interior Building, Washington, D. C.

Yours very truly, Mark S. Patton, Assistant Director, Natural Gas and Natural Gasoline Division, District Two.

[fol. 452] February 25, 1944.

Mr. Mark S. Patton,
Director Natural Gas & Natural Gasoline,
District Two,
Petroleum Administration for War,
410 Beacon Building,
Tulsa 3, Oklahoma.

DEAR MR. PATTON:

Attached hereto you will find a copy of Petroleum Administration for War, Form 3, which we have prepared to cover the drilling of 8 gas wells in the Hugoton Gas Field, Texas County, Oklahoma.

In accordance with the instructions given in Petroleum Administrative Order No. 11, as amended, we have sent two copies of this report to the Washington Office of Petroleum Administration for War.

Yours very truly, W. H. Wildes, President.

WHW/j

[fol. 452a] Petroleum Administration for War
Washington 25, D. C.

Jul 24 1943

P.A.O. No. 11. Case No. C-779.

Republic Natural Gas Company,
1505 Federal Street,
Dallas, Texas.

GENTLEMEN:

Pursuant to paragraph (c) (10) of Petroleum Administration Order No. 11, you are hereby authorized to use material as requested in your application, dated July 3, 1943, to drill, equip, and connect four wells in Texas County, Oklahoma, located in the approximate center of the following 640-acre tracts:

(1)	Section	35,	Township	4	North,	Range	14	East
(2)	"	25,	"	4	" ,	"	14	"
(3)	"	24,	"	6	" ,	"	14	"
(4)	"	19,	"	6	" ,	"	15	"

provided that before any such drilling operations are commenced eleven presently unconnected wells shall be connected to the pipeline system of Republic Natural Gas Company which wells are located in Stevens County, Kansas, as follows:

(1)	Section	5,	Township	34	South,	Range	37	West
(2)	"	7,	"	34	" ,	"	37	"
(3)	"	8,	"	34	" ,	"	37	"
(4)	"	33,	"	34	" ,	"	38	"
(5)	"	34,	"	34	" ,	"	38	"
(6)	"	35,	"	34	" ,	"	38	"
(7)	"	2,	"	35	" ,	"	38	"
(8)	"	5,	"	35	" ,	"	38	"
(9)	"	10,	"	35	" ,	"	38	"
(10)	"	11,	"	35	" ,	"	38	"
(11)	"	12,	"	35	" ,	"	38	"

If, in the course of your negotiations with owners or operators of the unconnected wells listed above, you and any owner or operator are unable to agree upon the terms and conditions under which gas shall be delivered into the pipeline system of Republic Natural Gas Company, the Petro-

leum Administrator for War is willing to have you submit the entire matter for our consideration and if we conclude [fol. 453] that the terms and conditions demanded by any such owner or operator are, in any sense, unfair or unreasonable, then the Petroleum Administration for War will relieve the Republic Natural Gas Company from the obligation imposed by the provision above stated, insofar as the well or wells of that owner or operator are concerned.

In all other respects, your application is denied.

Sincerely yours, Ralph K. Davies, Deputy Petroleum Administrator.

[fol. 454] Petroleum Administration for War
Washington 25, D. C.

Jul 28, 1943

Mr. H. R. Straight, President
Cities Service Gas Company,
Bartlesville, Oklahoma.

Mr. W. H. Wilds, President
Republic Natural Gas Company,
Dallas, Texas.

GENTLEMEN:

There has been submitted to this office, under date of July 19, 1943, in a letter addressed to Mr. E. H. Poe from Mr. H. R. Straight, President of the Cities Service Gas Company, a copy of a proposed "Gas Purchase Contract" to be executed between the Republic Natural Gas Company as seller and Cities Service Gas Company as buyer.

Mr. Straight states that:

> "Before signing this contract, the two companies would like to know whether or not this contract satisfies the exception to Petroleum Administrative Order No. 11, C-676, signed by Mr. Ralph K. Davies, Deputy Petroleum Administrator, and addressed to Mr. Geo. H. Baird, Cities Service Gas Company, under date of June 30, 1943."

It is assumed that the foregoing request for an opinion as to whether or not this contract satisfies the terms of the foregoing exception relates only to subsection (3) of the foregoing exception which provides:

> "Pipe line connections are completed with Republic Natural Gas Company for delivery of the balance of

immediate requirements at a point near the southeast corner of Section 1, Township 5 North, Range 14 East, and any other desirable point where pipe lines of both companies may intersect each other."

This is to advise you that the execution and full performance of the provisions of the proposed gas purchase contract as submitted will constitute compliance with the foregoing subsection of the exception to PAO-11, C-676, compliance with the foregoing subsection of the exception to PAO-11, C-676.

Sincerely yours, J. Howard Marshall, Chief Counsel.
(Seal.)

Duplicate Original.

[fol. 455] Petroleum Administration for War
Washington 25, D. C.

Oct 22, 1943

Mr. Alfred Hurlburt,
Republic Natural Gas Company,
1505 Federal Street,
Dallas, Texas.

My dear Mr. Hurlburt:

This will acknowledge receipt of your appeal dated October 6, 1943, requesting removal of the provisions to connect specified unconnected wells adjacent to your Hugoton gathering system which was contained in our letter, dated July 24, 1943, authorizing you to use material to drill, equip, and connect four wells in Texas County, Oklahoma, Case No. C-779.

In making additional supplies of gas available to your pipe line system in the Hugoton field, it is necessary that those unconnected wells adjacent to your system be utilized before authority can be granted you to use material in drilling new wells. Your letter states that certain of the unconnected wells are to be connected to other pipe line systems, and you are hereby relieved of the requirement to connect those wells. However, it has not been shown that connection of the remaining wells specified in your authorization is unjust or unreasonable, and your appeal is there-

fore denied with respect to these remaining unconnected wells.

Sincerely yours, J. Howard Marshall, Chairman of the Review and Appeals Committee. (Seal.)

[fol. 456] October 29, 1943.

Mr. J. Howard Marshall
Chairman of the Review and Appeal Committee
Petroleum Administration for War
Washington (25), D. C.

DEAR MR. MARSHALL:

We are in receipt of your letter dated October 22, 1943, wherein you deny our appeal for removal of the proviso attached to the authorization granted us to use material to drill, equip and connect four gas wells in Texas County, Oklahoma. In Case No. C-779 we were authorized to drill the wells, provided we connect specified unconnected wells adjacent to our Hugoton gathering system to that system.

In conference and by long distance telephone we have presented phases of our case. Since receipt of your letter we have reviewed the file and now recognize, to our surprise, that, as stated in your letter, the file alone does not show that the requirement that the remaining eight unconnected wells be connected to our system is unjust or unreasonable. Hereinafter, we shall endeavor, to demonstrate not only that the proviso is both unjust and reasonable; but that it also is wasteful of steel.

Enclosed herewith is a plat showing location of our wells and our gathering system in the Hugoton field, an examination of which may clarify the statements hereinafter made.

Republic Natural Gas Company has for many years been a producer of gas in the Hugoton field, and until recently the sole outlet for its product has been Northern Natural Gas Company, into whose pipe line we are under contract to deliver 60% of that company's requirements of gas for its Iowa and Nebraska markets. The capacity of that line does not exceed ninety million cubic feet of gas daily.

Quite recently, we have obtained an additional outlet for gas by virtue of a contract made with the Cities Service interests, under which we expect to commence gas deliveries in January.

[fol. 457] The delivery point for the gas we sell Northern Natural Gas Company has always been in the State of Kansas about three miles East of the town of Hugoton, and the delivery points for the gas we expect to sell under the new contract are in the State of Oklahoma.

The first gas that we developed in the Hugoton Field was developed in the State of Kansas, and our gathering system originally was located there, and this system and all extensions of it have in the past been designed primarily to facilitate deliveries to Northern Natural Gas Company, inasmuch as it afforded our sole market outlet.

Several years after we began deliveries to Northern Natural Gas Company, gas proration orders were promulgated by the duly constituted authorities of Kansas, which, if valid, would not have admitted of our performing the Northern Natural contract out of the allowable production of our Kansas wells. On promulgation of these orders and as a precaution, we drilled wells in Oklahoma and we extended our gathering system to connect those wells, and thus put ourselves in a position to supply with Oklahoma production the possible deficiencies in our Kansas allowables. The objectionable orders above long since ceased to be a menace.

In that part of the Hugoton Field lying within the State of Kansas, we now have 92 wells, many of which have recently been acidized, with the result that their productive capacity is now five to six times as great as it was twelve months ago. In Township 6 North, Range 14 East, Texas County, Oklahoma, we have 5 wells, which feed directly, or on relatively short lines, into our belt line system in the State of Kansas that consists of approximately fifty miles of 14 inch line. Through the center of this belt is another line, partially 8 inch and partially 10 inch, which increases the carrying capacity of the belt line system and facilitates delivery of gas to the point of its delivery to Northern Natural Gas Company.

The 92 Kansas wells and the aforesaid 5 Oklahoma wells are abundantly capable of performing our commitment to Northern Natural Gas Company. Last year on peak days we delivered to it approximately seventy million cubic feet of gas, and although it is physically impossible for that Company this year to require substantially larger deliveries, we can from said wells easily deliver in excess of eighty million cubic feet of gas daily.

[fol. 458] Since our application to drill eight additional wells was originally filed, our market position has changed materially. We now are under contract in Oklahoma to deliver a maximum of thirty-nine million cubic feet of gas daily. An examination of the enclosed plat will demonstrate that gas produced in Kansas cannot increase our capacity to make deliveries out of our pipe line system at the delivery points in Oklahoma. Any gas produced in Kansas applied to performance of our Cities Service contract would just automatically cut off deliveries in corresponding amounts from our existing Oklahoma wells, but the four wells that we have applied to drill, located where we have applied to drill them, would increase our capacity approximately twelve million cubic feet daily.

This result necessarily follows from the fact that our gathering system has been constructed to feed gas into the Kansas outlet, and not into an Oklahoma outlet which has heretofore been non-existent.

Connection of the Benedum & Trees wells to our gathering system would enable them to participate in our Northern Natural market, but it would neither facilitate performance of our Cities Service contract nor be conducive to the war effort in any particular that has come to our attention.

To drill and equip the four wells that we have applied to drill and to connect them to our gathering system, would require approximately two hundred tons of steel, which we have on hand, and these wells would provide gas that is badly needed.

To connect the eight unconnected wells in Kansas our gathering system would require, as appears from the enclosed estimate, in excess of three hundred tons of steel, which we do not have on hand, and would admit of the owners of those wells sharing a market that is a valuable property right of this Company, and that is already over supplied.

In the existing circumstances, is would be wicked waste even to permit us to connect the eight unconnected wells to our system. To require us to connect them and divert three hundred tons of steel from the war effort as a condition precedent to us utilizing two hundred tons of steel for a useful purpose is, we respectively submit, alike unjust, unreasonable and not in the public interest.

[fol. 459] Although the capacity of the Oklahoma wells has exceeded our expectation of their productivity, it is our considered judgment that the eight wells for which we originally applied are actually required to assure comfortable performance of our commitment under the Cities Service contract.

We apologize for our apparently undue persistence in this matter. The writer and our counsel have already made two trips to Washington in this general connection, and by these trips and the correspondence that has been conducted and the telephone calls that we have made we realize that considerable amount of valuable government time has already been uselessly diverted. Please accept our assurances that our persistence proceeds, not from any petty impulse, but from honest bafflement over our inability to elucidate a matter that seems to us already to be crystal-clear.

We should understand, and graciously accept, an unqualified denial of our application, but the granting of it subject to the condition imposed we do not understand.

If the statements of fact herein made would dispose the Review and Appeals Committee, to reconsider our application, we shall gladly appear with our engineers at any time and place you designate, under oath to testify to the accuracy of the statements.

However, if said statements do not dispose the Committee to reconsider our application, we still want to be, at the least, cooperative. Accordingly, if the Committee will not reconsider our application, kindly accept this letter as a formal withdrawal of the pending application.

Respectfully submitted, Republic Natural Gas Company. By W. H. Wildes, President.

WHW/mh/

[fol. 460] October 26, 1943.

Tonnage Requirement for Connection of the Following Wells to Republic Natural Gas Company 14" Pipe Line Loop in Kansas

1.	Benedum & Trees #1	Morris	CNW	33-34-38	4"-5280'
2.	Benedum & Trees #1	Watkins	CNW	34-34-38	6"-5280' 8"-9240'
3.	Benedum & Trees #1	Wheeler	CNW	35-34-38	4"-5280'
4.	Benedum & Trees #1	Ferguson	CNE	5-35-38	4"-7920'

5. Benedum & Trees	#2	Mitchell	CNW	2-35-38	4"-5280'
6. Benedum & Trees	#1	Beavers	CNE	11-35-38	4"-3960'
7. Benedum & Trees	#1	Hamilton	CSE	10-35-38	4"-1320'
8. Pioneer	#1	Williams	CSW	12-35-38	4"-1320'

Summary of Pipe Requirements.

4-½" O.D. Line Pipe	10 #P.E.	30,360'	303,600 lbs.	
6-⅝" O.D. Line Pipe	18.97 #P.E.	5,280'	100,162 lbs.	
8-⅝" O.D. Line Pipe	27.74 #P.E.	9,240'	256,318 lbs.	
				151.8 tons
				50.0
				128.2
				330.0 tons

Drips, heaters, meter runs, valves and miscellaneous connections for each well-average tonnage per well 1 ton x 8 wells 8.0

Total Tonnage 338.0 tons

[fol. 461] Petroleum Administration for War

Washington 25, D. C.

Nov. 15, 1943.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

GENTLEMEN:

This will acknowledge receipt of your letter dated October 29, 1943, in regard to the connection of unconnected wells in the Hugoton field.

Officials of the Republic Natural Gas Company have clearly stated in correspondence with the Petroleum Administration for War that your Hugoton pipe line system has available sufficient gas to fulfill obligations to the Northern Natural Gas Company, and in addition, has excess gas available which can be used to supply a portion of the requirements of the pipe line to be constructed to the Hugoton field by the Cities Service Transprotation & Chemical Company. Based upon these representations, the Petroleum Administration, is authorizing Cities Service to construct producing and gathering facilities in the field, im-

posed a requirement that a pipe line interconnection be made with your Company in order to utilize your excess availability to supply a portion of their requirements.

Notwithstanding your statements in regard to excess availability, the Petroleum Administration believes that the unconnected wells adjacent to your system should be connected. This would permit more uniform withdrawals from a highly developed area and, in view of Northern Natural Gas Company's contention that an interconnection with Cities Service would impair your ability to furnish Northern's demand, would provide reinforcement of your production facilities which are most useful in supplying Northern. The Petroleum Administration is justified in authorizing you to drill and connect four new wells only if in so doing the connection of these unconected wells is accomplished. The drilling of new wells by a company cannot be justified regardless of present or future markets where there are unconnected wells within a reasonable distance of that company's pipe line facilities.

Connection of the eight remaining unconnected wells specified in your authorization can be accomplished through the use of less than 200 tons of material by relocating your suggested connection facilities and by utilizing lighter weights of pipe. The total tonnage of material required to connect these wells and to drill and connect the four new wells authorized is smaller than that required to drill and connect the eight wells contemplated in your application. [fol. 462] Our interest in the matter of interconnection has been for the purpose of using presently unused productive capacity to supply additional market demands. If, as you now indicate, your production facilities are not adequate to furnish the minimum contractual requirement of 25 million cubic feet per day to Cities Service, it is requested that you verify this inability immediately in order that Cities Service may be notified of this potential deficiency and may make arrangements to drill the additional wells necessary.

The entire record in this case, including your letters of October 6, 1943, and October 29, 1943, have been carefully reviewed. This review does not disclose facts or data which justify either the removal of the provision contained in your authorization dated July 24, 1943, or the withdrawal of your application dated July 3, 1943. Therefore, in view of your inability to comply with the provision con-

tained in your authorization, we are recommending that the authority granted therein be revoked.

Sincerely yours, J. Howard Marshall, Chairman of the Review and Appeals Committee.

[fol. 463] Petroleum Administration for War

Washington 25, D. C.

P. A. O. No. 11. Case No. C-779

Dec. 6, 1943.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

GENTLEMEN:

Inasmuch as you have failed to comply with the provisions of my letter dated July 24, 1943, the authority granted you therein to drill, equip and connect four wells in Texas County, Oklahoma, is hereby revoked.

Very truly yours, Ralph K. Davies, Deputy Petroleum Administrator.

[fol. 464] February 3, 1944.

Mr. Mark S. Patton, Director, Natural Gas & Natural Gasoline, District Two, Petroleum Administration for War, 410 Beacon Building, Tulsa 3, Oklahoma.

DEAR MR. PATTON:

I hand you herewith copy of Application for Permission to Enlarge Certain of our Gas Transmission Lines in the Hugoton Gas Feld, Texas County, Oklahoma.

This application for exception is in accordance with Paragraph (k) (1) of Petroleum Administrative Order No. 11 as amended January 1, 1944.

Yours very truly, M. L. Ferguson.

MLF/j.

[fol. 465] (1)

February 23, 1944.

Mr. James G. Pew, Director of Natural Gas and Natural Gasoline, Petroleum Administration for War, New Interior Building, Washington 25, D. C.

Dear Mr. Pew:

We enclose herewith two copies of an application to enlarge certain of our gas transmission lines located in Texas County, Oklahoma, in the Hugoton Field, and trust that the explanation of our needs is sufficiently clear that we may obtain an early decision.

A copy of this application has been delivered to:

Mr. Mark S. Patton, Director, Natural Gas and Natural Gasoline, District Two, Petroleum Administration for War, 410 Beacon Building, Tulsa 3, Oklahoma.

Very truly yours, W. H. Wildes, President.

Encl. WHW:mh.

[fol. 466] February 25, 1944.

Mr. James G. Pew, Director of Natural Gas and Natural Gasoline, Petroleum Administration for War, New Interior Building, Washington, D. C.

Dear Mr. Pew:

We enclose herewith two copies of Petroleum Administration for War, Form 3, which we have prepared to cover the drilling of 8 gas wells in the Hugoton Gas Feld, Texas County, Oklahoma.

Because of conditions existing, it is our desire to drill these wells as quickly as possible and we will, therefore, appreciate very much a decision at the earliest possible date.

Yours very truly, W. H. Wildes, President.

WHW:j.

[fol. 467] EXHIBIT No. 38

February 25, 1944.

Mr. Mark S. Patton, Director Natural Gas & Natural Gasoline, District Two, Petroleum Administration for War, 410 Beacon Building, Tulsa 3, Oklahoma.

DEAR MR. PATTON:

Attached hereto you will find a copy of Petroleum Administration for War, Form 3, which we have prepared to cover the drilling of 8 gas wells in the Hugoton Gas Field, Texas County, Oklahoma.

In accordance with the instructions given in Petroleum Administrative Order No. 11, as amended, we have sent two copies of this report to the Washington Office of Petroleum Administration for War.

Yours very truly, W. H. Wildes, President.

WHW:j.

[fol. 468] Petroleum Administration for War

Washington (25)

Mar. 1, 1944.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

GENTLEMEN:

This will acknowledge receipt of your application dated February 24, 1944, for exception to Petroleum Administrative Order No. 11, to drill eight gas wells in the Hugoton Field, Texas County, Oklahoma.

Your application is receiving the attention of this office and any further correspondence with respect thereto should refer to Case No. G-1189.

Sincerely yours, B. C. Adams, Jr., Chief, Natural Gas Section, Natural Gas and Natural Gasoline Division.

[fol. 469] Petroleum Administration for War
Washington (25)

P.A.O. No. 11
Case No. C-1187

Mar 24 1944.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

GENTLEMEN:

Pursuant to the provisions of paragraph (m) of Petroleum Administrative Order No. 11, you are hereby authorized to use material as requested in your application dated January 31, 1944, required to enlarge your gas gathering facilities in Texas County, Oklahoma, in the manner proposed in your application.

Sincerely yours, Ralph K. Davies, Deputy Petroleum Administrator.

[fol. 470] Petroleum Administration for War
Washington (25)

Feb 29 1944.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

GENTLEMEN:

This will acknowledge receipt of your application, dated January 31, 1944, for exception to Petroleum Administrative Order No. 11, to enlarge a portion of your gathering system in Texas County, Oklahoma.

Your application is receiving the attention of this office and any further correspondence with respect thereto should refer to case No. G-1187.

Sincerely yours, B. G. Adams, Jr., Chief, Natural Gas Division, Natural Gas and Natural Gasoline Division.

[fol. 471] Petroleum Administration for War
Washington (25)

Mar 25 1944.

P.A.O. No. 11
Case No. G-1189

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

GENTLEMEN:

Pursuant to the provisions of paragraph (m) of Petroleum Administrative Order No. 11, you are hereby authorized to use material as requested in your application dated February 24, 1944, required to drill, equip and connect eight gas wells in the approximate center of geographic sections as follows: Sections 1, 25 and 35, Township 4 North, Range 14 East; Sections 1, 12, 24 and 25, Township 5 North, Range 14 East; and section 31, Township 6, North, Range 15 East, all in the Hugoton field, Texas County, Oklahoma, in the manner proposed in your application, provided that with respect to those unconnected gas wells in the Hugoton field referred to in your letter of March 21, 1944, you perform the acts stated in said letter.

Sincerely yours, Ralph K. Davies, Deputy Petroleum Administrator.

For Victory Buy United States War Bonds and Stamps.

[fol. 472] March 25, 1944.

Federal Power Commission, Eighteenth and Pennsylvania Ave. NW, Washington, D. C.

Attention: Hon. Basil Manley, Commissioner
Re: Republic Natural Gas Company, request for ruling

GENTLEMEN:

This letter is addressed to you as the result of certain negotiations heretofore had and now concluded with the office of Petroleum Administration for War upon the application of Republic Natural Gas Company to obtain certain permits to drill certain wells in the Hugoton gas area in Texas County, Oklahoma, and its requested exception to P.A. O. order No. 11.

Because of the war emergency, the office of Petroleum Administration for War is properly of the opinion that full utilization of the presently drilled (but unconnected) gas wells located in a part of the Hugoton gas field in the state of Kansas, should be accomplished by the industry before critical materials should be used to drill and equip other additional gas wells.

Consistent with the policy of P. A. W., Republic National Gas Company was requested to participate with certain recognized pipe line companies now operating in the field to this end that the above result might be accomplished.

It has always been the contention of the Republic Natural Gas Company that it was and now is engaged in the Hugoton gas field solely in the business of producing and gathering natural gas and not 'natural gas company' as contemplated and defined under the terms of the National Gas Act.

Being desirous of fully cooperating with the request of P.A.W. in the accomplishment of its program, but conditioned always upon the premise that by so conforming to the request and policy of P.A.W. in this regards, Republic Natural Gas Company would not and will not alter its existing factual and legal status under the terms of said Natural Gas Act.

Republic Natural Gas Company has committed itself to promptly do and perform the following:

[fol. 473] (a) That at its own proper cost and expense and without cost or expense to either the well owners or the prospective purchasers of natural gas, it lay and install extensions of its present gathering system located in the state of Kansas, additional gathering line or lines which will be connected with its present gas gathering system and extend to a point at or near four certain gas wells located in said Hugoton gas pool in the state of Kansas. Th Republic Natural Gas Company will lay and construct, and thereafter maintain, said extension of its gathering system to the meters of the well owner or purchaser, as the case may be, such said lines as may be necessary to receive from said wells into its gathering system, such gas in its natural state as may be fixed by the allowables of the regulatory body having jurisdiction thereover.

(b) Republic Natural Gas Company will, through its said extension or extensions of its gathering system, re-

ceive at the meter aforesaid natural gas in its natural state and will thereupon transport such gas through its said gathering system to a point of delivery to the purchasers thereof (said point of delivery on its gathering system located in the Northwest Quarter of Section 19, Township 33, Range 36 West in Stevens County, Kansas), and there deliver to the purchasers of such gas such gas so received by it at the wells of the owners aforesaid.

(c) That Republic Natural Gas Company in so receiving, gathering, transporting, and delivering said gas from the wells of the owners to the point of delivery aforesaid, will do and perform said acts without any charge and without any compensation therefor or any advantage to said Republic Natural Gas Company in the nature of hire for its said services. Republic will likewise at its own expense absorb and bear any burden on account of line losses and otherwise by any manner accruing or by any circumstance happening in the said reception, transportation, or delivery of said natural gas.

(d) The arrangement recited (a) to (c) inclusive, will be done as soon as the same can be performed, after notification to Republic by the owners and the prospective purchasers of their arrangements to sell and purchase gas as herein provided (said well owners may act singularly or collectively in such determination, as they may determine).

Such arrangement shall continue from the date of the first receipt and delivery of said natural gas and so long as said owners and purchasers shall desire, but not exceeding the last day of a six months period following the cessation of hostilities in the present World War No. II, as that term is defined in the arrangement heretofore referred to with the Petroleum Administration for War.

[fol. 474] The purpose of this letter is to request of the Federal Power Commission an appropriate ruling or determination that Republic Natural Gas Company, in the making of said arrangement to so receive, transport, and deliver said natural gas through its gathering system and the faithful performance of it of things herein related during the existing war emergency, does not and will not be held or construed to be an act or acts which may now or hereafter be held or asserted to be a change in its factual and legal status in the conduct of its business or producing and

gathering natural gas, nor will its acts and conducts herein recited constitute the basis of a claim that it has thereby constituted itself a natural gas company under the terms of the Natural Gas Act, which but for the doing of said acts it would not have been so construed and constituted.

Your ruling in this matter is requested and your prompt consideration thereof will be appreciated.

Respectfully submitted, Republic Natural Gas Company, by W. H. Wildes, President.

WHW:mh

[fol. 475] Cities Service Gas Company
Bartlesville, Okla.

April 27, 1944.

Republic Natural Gas Company, 1505 Federal Street, Dallas 1, Texas.

Attention: Mr. Alfred Hurlburt

GENTLEMEN:

In compliance with provisions of letter from Petroleum Administration for War, dated June 30, 1943, we have connected our Heisner #1 well, in Section 12, Township 4 North, Range 14 East, to your pipeline. Deliveries from that well into your pipeline commenced April 20, 1944.

In completing our 1944 program, our present lines will be extended so that the Heisner well can be connected directly into our system and disconnected from your pipeline. Until such time as we can tie it into our system, we could like to arrange to measure the gas delivered from this well into our pipeline and deduct the quantity so delivered from the quantities of gas measured by the meter or meters through which we receive gas purchased from you under contract of July 19, 1943.

If this arrangement is satisfactory to you, will you please so indicate by having one copy of this letter signed and returned to us.

Yours very truly, Cities Service Gas Company, by Geo. H. Baird, Vice President.

Arrangement agreed to May 3, 1944.

Republic Natural Gas Company, by Alfred Hurlburt, President (Vice).

[fol. 476] EXHIBIT CP-619

Supplementary Agreement

This Agreement, Made April 26, 1944 between Republic Natural Gas Company, of Dallas, Texas, as Seller and Cities Service Gas Company, of Bartlesville, Oklahoma, as Buyer:

Witnesseth:

Whereas, on the 19th day of July 1943, the parties entered into a "Gas Purchase Contract" covering deliveries of gas by Seller to Buyer in the Texas County, Oklahoma portion of the Hugoton Field, and

Whereas, paragraph numbered 1 of said contract provided for a point of delivery near the SE corner of Section 1, Township 5N, Range 14 E, Texas County, Oklahoma, and any other delivery points thereafter mutually agreed upon between the parties and

Whereas, the parties now desire to establish an additional delivery point near the SE corner of Section 13, Township 4N, Range 14E in said county,

Now, Therefore, in consideration of the covenants hereof, the parties do agree that deliveries may be made at the following additional delivery point to-wit:

A Point near the SE corner of Section 13, Township 4N, Range 14E, Texas County, Oklahoma.

In Witness Whereof, the parties have hereunto subscribed their names this 29th day of April 1944.

Republic Natural Gas Company, Seller, by Alfred Hurlburt, Vice President. (Seal.)

Attest: L. Balden, Secretary.

Cities Service Gas Company, Buyer, by Geo. H. Baird, Vice President.

Attest: Geo. Davies, Asst. Secretary.

[fol. 477] Commissioners: Leland Olds, Chairman, Basil Manly, Vice Chairman, Claude L. Draper, John W. Scott, Nelson Lee Smith.

Address all Communications to the Commission.

Leon M. Fuquay, Secretary.

Federal Power Commission
Washington 25

Apr 29 1944.

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas.

Attention: W. H. Wildes, President

GENTLEMEN:

This is in further reference to your letter of March 25, 1944 requesting Commission assurance that compliance with certain requests of the Petroleum Administration for War will not affect your status under the Natural Gas Act.

From your letter it appears that you propose, in cooperation with the Petroleum Administration for War, to extend your gathering system to four gas wells in the Hugoton Field in Kansas, to transport natural gas from such wells through your system, and deliver it to purchasers in Stevens County, Kansas. It further appears that the well owners will sell such gas direct to the purchasers, rather than through your company, and that you will install and operate the necessary facilities and gather and transport such gas without compensation. In effect, you request Commission assurance that your status under the Natural Gas Act will not be affected by the making of such arrangements or performance thereunder during the existing war emergency.

Certain specific information must be had before final action may be taken on your request. In particular, the location of the four gas wells in the Hugoton Field, the names and addresses of their owners, the approximate volumes of natural gas to be gathered therefrom, the distance of its proposed transportation by you, the facilities involved (including a sketch thereof), and the names and addresses of the prospective purchasers, must be provided

for appropriate consideration of your request by the Commission.

The prompt submission of this information will facilitate action in the premises.

Yours very truly, Leon M. Fuquay, Secretary.

[fol. 478] (1)

May 3, 1944.

Mr. Leon M. Fuquay, Secretary, Federal Power Commission, Washington 25, D. C.

DEAR SIR:

Mr. W. H. Wildes is out of town and will be for a week or so, so I am sending you the information asked for in your letter to him of April 29.

There is just one thing about this information that I would like to qualify and that is that the amount of gas that will be taken from these wells and transported by the Republic Natural Gas Company under the proposed arrangement will depend entirely on the allowability set for these wells from month to month by the Kansas Corporation Commission, and the figures we have used here are an estimate of what we think these wells will be allowed on the average. However, we would like to say that it is perfectly possible that if the owners of these wells should acidize these wells heavier the amount of gas taken from them would be increased.

I trust the attached information is what you desire.

Yours very truly, Alfred Hurlburt, Vice President.

AH:ab
Exhibit Attached

[fol. 479] I. *Location of Wells and Name and Address of Owners*

Benedum-Trees Oil Company,
Benedum-Trees Building,
Pittsburg-, Pennsylvania.

1. Beavers No. 1:

NE¼ of Section 11, Township 35, Range 38, Stevens County, Kansas.

2. Ferguson No. 1:

NE¼ of Section 5, Township 35, Range 38, Stevens County, Kansas.

3. Hamilton No. 1:

SE¼ of Section 10, Township 35, Range 38, Stevens County, Kansas.

Pioneer Petroleum Company
334 Kennedy Building
Tulsa, Oklahoma.

4. Williams No. 1:

SW¼ of Section 12, Township 35, Range 38, Stevens County, Kansas.

II. *Approximate Volume of Gas to Be Gathered.*

Benedum-Trees Oil Company:

Beavers No. 1—6,000 MCF/ Month
Ferguson No. 1—9,000 MCF/Month
Hamilton No. 1—5,000 MCF/Month

Pioneer Petroleum Company:

Williams No. 1—12,000 MFC/Month.

III. *Distance of Proposed Transportation by Republic Natural Gas Company.*

Reference is made to map attached upon which is shown in red outline, the shortest portion of Republic's System, [fol. 480] (approximately 17 miles), that will transport Benedum-Trees and Pioneer's gas to Northern Natural Gas Company's intake. Shown in dotted red outline is Republic's proposed gathering lines to Benedum-Trees and Pioneer wells. The Northern Natural Gas Company line is shown in green outline. Each of the wells under consideration is indicated by an orange circle.

IV. *Name and Address of Prospective Purchaser*

Northern Natural Gas Company,
Aquila Court Building,
Omaha, Nebraska.

[fol. 481] EXHIBIT

Bill of Sale

Whereas, subject to and upon the terms hereinafter stated, Cities Service Gas Company, a Delaware Corporation, with offices in Bartlesville, Oklahoma, hereinafter called "Seller," desires to sell, and Robert C. Foulston, hereinafter called "Buyer", desires to purchase the two hereinafter described gas wells, casing and equipment, now owned by Seller;

Now, Therefore, for and in consideration of the sum of Ten Dollars and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and in compliance with the provisions of that certain oil and gas lease exchange contract this day executed by Cities Service Oil Company, Cities Service Gas Company and Republic Natural Gas Company, Seller hereby bargains, sells, conveys and sets over unto Buyer all Seller's right, title and interest in and to the following described property, to-wit:

The bore hole of that certain gas well known as Burdge No. 1 located in approximately the center of the Southwest Quarter (SW¼) of Section Twenty (20), Township Six North (6N), Range Sixteen East (16E); and

The bore hole of that certain gas well known as Wheeler No. 1 located in the Northeast (NE) corner of the Southwest Quarter (SW¼) of Section Thirty-Two (32), Township Six North (6N) Range Fifteen East (15E);

[fol. 482] all in Texas County, Oklahoma, together with all casing and equipment located in and about said two gas wells.

To have and to hold said property unto Buyer, his heirs and assigns forever.

Seller covenants that it is the lawful owner of said property and agrees to warrant the same against the lawful claims and demands of all persons who may claim the same by, through and under Seller, but no further. Buyer agrees Seller makes no other warranty or representation concerning said property.

Executed this 23d day of July, 1943.

Cities Service Gas Company. By Geo. H. Baird, Vice President.

[fol. 483] EXHIBIT

Bill of Sale

In consideration of the payment of the sum of ten ($10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, I hereby bargain, sell, convey, and set over to Republic Natural Gas Company, a corporation, its successors, trustees, and assigns all of the right, title and interest acquired by me under the terms of said bill of sale, executed and transferred by Cities Service Gas Company under date of July 23, 1943, covering the following described property, to-wit:

The bore hole of that certain gas well known as Burdge No. 1 located in approximately the center of the Southwest Quarter (SW¼) of Section Twenty (20), Township Six North (6N), Range Sixteen East (16E); and

The bore hole of that certain gas well known as Wheeler No. 1 located in the Northeast (NE) corner of the Southwest Quarter (SW¼) of Section Thirty-two (32), Township Six North (6N), Range Fifteen East (15E);

all in Texas County, Oklahoma, together with all casing and equipment located in and about said two gas wells.

To have and to hold said property unto said Republic Natural Gas Company, its successors and assigns forever.

Dated this 27th day of July, 1943.

Robert C. Foulston.

[fol. 484] STATE OF KANSAS,
County of Stevens, ss:

Before me, the undersigned, a Notary Public, within and for said County and State, on this 27th day of July, 1943, personally appeared Robert C. Foulston, to me personally known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and official seal the day and year last above written.

C. F. Seagrave, Notary Public. (Seal.) My Commission expires Oct. 28, 1944.

[fol. 485] EXHIBIT

Excess Gas Contract

Contract dated November 25, 1942, by and between Northern Natural Gas Company, a Delaware Corporation, herein called "Northern", and Republic Natural Gas Company, a Delaware corporation, herein called "Republic".

The parties hereto mutually agree as follows:

Section 1. Obligation of Republic to Deliver. Subject to the terms and provisions of this contract, Republic agrees to sell and deliver to Northern such volume of gas as it may from time to time have available up to but not exceeding one billion cubic feet of gas in excess of the volume of gas Northern is obligated to purchase under the Gas Purchase Contract of May 27, 1930, (as now or hereafter amended and in effect between the parties hereto). Such gas is herein referred to as "excess gas."

Section 2. Obligation of Northern to Receive. Northern at its sole option from time to time may receive such "excess gas" but shall be under no obligation to take or receive any of such gas.

Section 3. Price and Billing. For natural gas delivered hereunder Northern shall pay Republic four (4) cents per thousand cubic feet.

Promptly following December 31st of each year, the amount of "excess gas" purchased and received by Northern during the preceding calendar year shall be determined and Northern shall pay Republic for such gas on or before January 25th next succeeding.

Section 4. Applicable Provisions of the May 27, 1930 contract. The provisions of the contract of May 27, 1930 (as now or hereafter amended and in effect between the parties hereto) shall apply with respect to measurement, quality, delivery point, delivery pressure, title, division of liability, commission jurisdiction, successors and assigns, and such provisions are by reference incorporated in and made a part of this contract.

Section 5. Term. This contract shall be retroactively effective as of January 1, 1942, and shall continue in effect until January 1, 1946, and annually thereafter unless cancelled by Republic on January first of any year beginning with the year 1946, by giving Northern twelve (12) months' prior written notice of such cancellation.

[fol. 486] *Section 6. Miscellaneous.* It is the intention of the parties hereto that this contract be entirely independent of any other contract now existing between them, and the references herein to the contract of May 27, 1930, (as now or hereafter amended and in effect between the parties hereto), are not intended to in any manner amend, or modify the same or to increase or diminish the obligations of either of the parties hereto.

Section 7. Cancellation of Previous Contract. This agreement supersedes, cancels and terminates, as of the effective date hereof, the Excess Gas Contract dated November 18, 1939, as now in effect between the parties hereto.

Accordingly, the parties hereto have executed this contract.

Northern Natural Gas Company. By R. R. Bay, President. Attest, J. F. Jremain, Secretary. (Seal.) Date Executed 11-27-42.

Republic Natural Gas Company. By Wm. H. Wildes, President. Attest, L. Balden, Secretary. (Seal.) Date Executed 11-30-42. (Seal.)

[fol. 487] EXHIBIT

Commissioners: Leland Olds, Chairman; Basil Manly, Vice Chairman; Claude L. Draper, John W. Scott, Nelson Lee Smith.

Addres all communications to the Commission. Leon M. Fuquay, Secretary.

Federal Power Commission
Washington 25

July 7, 1944.

Republic Natural Gas Company, 1505 Federal Street, Dallas 1, Texas.

Attention: Alfred Hurlburt, Vice President.

GENTLEMEN:

This is in response to your letter of June 16, 1944, requesting Commission assurance that the status of your company under the Natural Gas Act will not be affected by reason of your transporting natural gas for Peerless Oil and Gas Company in Texas County, Oklahoma, as more particularly described hereinafter.

From available information, it appears that Peerless proposes to sell gas to Cities Service Gas Company from a well on Section 14, Township 6 North, Range 15 East, in Texas County, Oklahoma in part thru its own facilities and in part thru those of Republic. It further appears that Republic is to transport the gas some seven miles from Section 14, Township 6 North, Range 15 East to the present interconnection between the Republic system and the Cities Service System located near the southwest corner of Section 6, Township 5 North, Range 15 East, in Texas County, Oklahoma. In effect, you request Commission assurance that the status of your company under the Natural Gas Act will not be effected by the making of such arrangements or the performance thereunder during the present war emergency.

The Director, Natural Gas and Natural Gasoline Division, Petroleum Administration for War, has advised the Commission that the connection of this well will be in the interest of the war program and that his office will appreciate Commission consideration of the matter.

Accordingly, this is to assure you that the Commission will not utilize the war emergency transaction herein specified as a basis for asserting jurisdiction over your company under the natural Gas Act. This assurance is not to be construed as a determination of whether your company is a natural-gas company within the meaning of the Act, by reason of its present operations, apart from the proposed transaction as herein specified. This assurance is limited to the present war emergency, but not beyond 90 days after the cessation of hostilities, and is conditioned upon your reporting to the Commission on the fifth day of each month hereafter the amounts of gas so transported for Peerless [fol. 488] Oil and Gas Company and delivered to Cities Service Gas Company, and any compensation you may receive therefor or in connection therewith.

Copies of this letter are being se-t to James E. Pew, Director, Natural Gas and Natural Gasoline Division, Petroleum Administration for War, Washington 25, D. C., and to Vernon F. Taylor, President, Peerless Oil and Gas Company, Tionesta, Pennsylvania.

Very truly yours, Leon M. Fuquay, Secretary

Copy mailed to Mr. Siefkin 7-10-44, also 7-15-44.

(Here follows 1 Photolithograph, side folio 489)

[fols. 490-491] EXHIBIT 50

Gas Purchase Contract, Dated July 19, 1943

Republic Natural Gas Company and Cities Service Gas Company

[fol. 492] Gas Purchase Contract

This agreement, made and entered into on this 19th day of July, 1943, by and between Republic Natural Gas Company, a Delaware Corporation with offices in Dallas, Texas, hereinafter referred to as "Seller" and Cities Service Gas Company, a Delaware Corporation with offices in Bartlesville, Oklahoma, hereinafter referred to as "Buyer";

Witnesseth: Whereas, Seller is the owner and operator of oil and gas leases in the area known as the Hugoton field in Oklahoma and Kansas and has numerous gas wells therein capable of producing more gas than is required to fulfill its present engagements, and

Whereas, Buyer is engaged in the business of producing, purchasing and selling natural gas at wholesale to chosen customers and to distributors of natural gas throughout a wide area comprising several states and in order to meet the requirements of its said customers, is desirous of obtaining a supply of merchantable gas in addition to its present supply.

Now, therefore, in consideration of the mutual covenants and agreements herein contained the Seller and Buyer agree with each other as follows:

1. Seller agrees to sell and deliver and Buyer agrees to purchase and receive at a point of delivery near the southeast corner of Section 1, Township 5N, Range 14E, Texas County, Oklahoma, and any other delivery points hereafter mutually agreed upon between the parties, twenty-five million (25,000 M) cubic feet of dry merchantable gas in its natural state of production daily, averaged over each of the Buyer's gas accounting months, which respective accounting months extend from the 23rd of one calendar month to and including the 22nd day of the next succeeding calendar month. The takes or deliveries in any month above the minimum requirement may be applied to deficiencies but only to the extinguishment of deficiencies in the next preceding or next succeeding month. Seller agrees to deliver to Buyer an amount of gas, if required by Buyer, up

to thirty-five million (35,000 M) cubic feet daily, averaged as aforesaid.

[fol. 493] In the event Seller fails to deliver the minimum daily amount herein provided, solely because of the decrease of supply of gas that may be available to Seller from time to time, during and averaged over any three (3) consecutive accounting periods, the average daily delivery of such gas during such three (3) periods shall become the minimum Buyer shall be required to receive hereunder during the remaining term and continuance of this contract, unless in later similar periods a lower minimum is so established. The lowest successive minimum so established by Seller herein shall thereafter become the minimum hereunder during the then unexpired term and continuance hereof.

2. Seller agrees to install, operate and maintain at its own cost and risk a pipeline of suitable size and design from some common point on its leaseholds to said point of delivery and to install, operate and maintain such pipelines, heaters, regulating devices, drips and separators as may be reasonably necessary to enable Seller to deliver uninterruptedly such gas from its wells against the varying pressures in the pipeline into which delivery hereunder is made at said point of delivery.

3. The Buyer agrees to install, operate and maintain at its own cost, risk and expense at said point of delivery a meter of suitable size and design, for the reception and measurement of gas delivered as specified herein.

4. The actual point of delivery of such natural gas purchased hereunder shall be at the inlet to Buyer's drip constructed on the inlet side of the Buyer's such meter setting and after the gas is so delivered by the Seller to the Buyer, Seller shall not be liable to the Buyer for any loss, damage or injury resulting from said gas or its use after it leaves such point of delivery.

5. The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base of Two (2 lbs.) Pounds per square inch above atmospheric pressure and on a temperature base of Sixty Degrees (60°F.) Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyles' Law, atmospheric pressure is Fourteen and four-tenths (14.4 lbs.) Pounds per square inch and flowing tem-

[fol. 494] perature of the gas in the meter is Sixty Degrees (60°F.) Fahrenheit.

In the event orifice meters are used for the measurement of gas delivered hereunder, coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are One (1). Specific gravity determinations for the purpose of measurement computations shall be made in accordance with an approved method and the monthly average of these determinations shall be used respectively at the close of the billing period for calculating the volume of gas delivered hereunder.

6. Seller warrants title to gas delivered hereunder and right to sell same and that it is clear of all liens and adverse claims. In the case of adverse claim to the title of any gas purchased hereunder or the land from which it is produced or to any unpaid royalties, Buyer may without otherwise affecting this contract retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished. Seller is to have right to inspect meter in the presence of representatives of Buyer and to ask for test and witness same, but is in no event to alter or in any manner disturb, manipulate or tamper with any of Buyer's equipment.

7. The Buyer shall have the right, when said gas becomes unmerchantable by reason of the oxygen content or from any other or different causes affecting the quality of the gas, or when the content of said gas renders the reception thereof in Buyer's pipeline hazardous or injurious to its property or to the ultimate consumer thereof, to cease taking the same until such time as it again becomes merchantable or the causes rendering the reception and utilization of said gas hazardous or injurious as aforesaid are corrected. The Seller shall also have the right to cease delivery, if by reason of the aforesaid causes, said gas becomes hazardous or injurious to receive into its equipment, when operated in the manner necessary to make said deliveries. The Seller shall, when said gas becomes unmerchant-[fol. 495] able or the reception and utilization thereof becomes hazardous or injurious as aforesaid, immediately

take all reasonable and practicable steps to eliminate and correct the causes rendering the said gas unmerchantable.

8. Buyer shall pay by check for gas delivered hereunder on or before the 25th day of each calendar month following Buyer's fiscal month for gas accounting in which such gas has been delivered at the price of four and one-half cents (4½¢) per thousand cubic feet.

9. All of the property and equipment installed by either of the parties hereto, under the terms of this contract, shall remain the property of that respective party, and each of the parties hereto shall have the right to remove its said equipment; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims for damages of whatsoever kind resulting from the operation, maintenance and reclaim of the property, machinery and equipment which it has installed.

10. Seller agrees to promptly notify by telephone the pressure dispatcher of the Buyer at Bartlesville, Oklahoma, of any interruptions affecting the delivery of gas hereunder and also to begin, increase, decrease or discontinue the delivery of gas hereunder on the telephonic orders of the Pressure dispatcher of the Buyer.

11. Seller assumes full and complete responsibility for all payments that may accrue and become due on such gas so delivered and the Seller hereby agrees to hold the Buyer harmless from any and all claims for payments on said gas.

12. Buyer shall not be bound by any transfer of any interest in the gas purchased or of the payments herein provided to be made by Buyer, until it has been furnished with the original or a certified copy of such transfer, by Seller.

13. Meter measurements, found to be in error because of mechanical reasons, or otherwise not reflecting actual passage of the gas, in an amount more that three (3) per cent of [fol. 496] the actual amount delivered or received, shall be corrected and accounts adjusted accordingly, but the period of adjustments shall not exceed thirty (30) days preceding the test, and all claims of either party as to the gas deliv-

ered or received otherwise than as shown by said meters must be preferred in writing by such respective party within sixty (60) days from the date of the commencement of such claimed discrepancy and all claims of each party hereto concerning either the comparative amount, as related to other wells or sellers, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said period of sixty (60) days.

14. All the terms, covenants and agreements hereof shall run in favor of and be binding upon the parties hereto, their successors and assigns. This contract shall be capable of specific performance and equitable remedies to prevent the wrongful diversion of the gas sold hereunder, or other breach hereof.

15. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction, not voluntarily caused or contributed to by invoking party, and jurisdiction of person or subject matter is not conferred hereby, and to causes, accidents, and occurrences beyond the control of the parties. Impossibility of performance caused by any of the things in this paragraph alluded to shall be a valid defense so far as such things prevent performance or render performance unlawful either by Buyer or Seller.

16. The term of this contract shall be for two (2) years from date of first delivery and thereafter until cancelled by six (6) months written notice by either party, such notice to be given on the first day of any month on or after two years from date of first delivery; however, in the event of cessation of hostilities with the Axis Powers during the stated term hereof, this contract can be cancelled by either party by serving a six (6) months written notice on the other at any time after such cessation. For the purposes of this contract the said cessation of hostilities shall mean that day when actual fighting shall cease between all the then existing governments of the United Nations (United [fol. 497] States of America, Great Britain, Russia and China) and the Axis Powers (Germany, Italy and Japan). Unless sooner terminated as herein provided this contract shall end and terminate twenty (20) years from the date hereof.

17. Deliveries of gas hereunder shall commence if and when a 26" pipeline is constructed by Buyer or its affiliate from the Texas County, Oklahoma portion of said Hugoton Field to Buyer's natural gas pipeline system at its Blackwell, Oklahoma compressor station, and when Buyer begins to deliver its produced gas into said pipeline, and this whole contract is contingent upon said 26" pipeline being built and operated. In the event that said pipeline is not constructed within two (2) years from the date hereof this agreement may be cancelled by either party upon the giving of thirty (30) days notice to the other of its intention to so cancel and terminate.

In witness whereof, the parties hereto have executed this instrument the day and year first above written.

Republic Natural Gas Company, Seller, by Wm. H. Wildes, President. Attest: L. J. Golden, Secretary. (Seal)

Cities Service Gas Company, Buyer, By H. R. Straight, President. Attest: G. C. Roth, Asst. Secretary. (Seal)

[fol. 498]

EXHIBIT

1220

Western Union

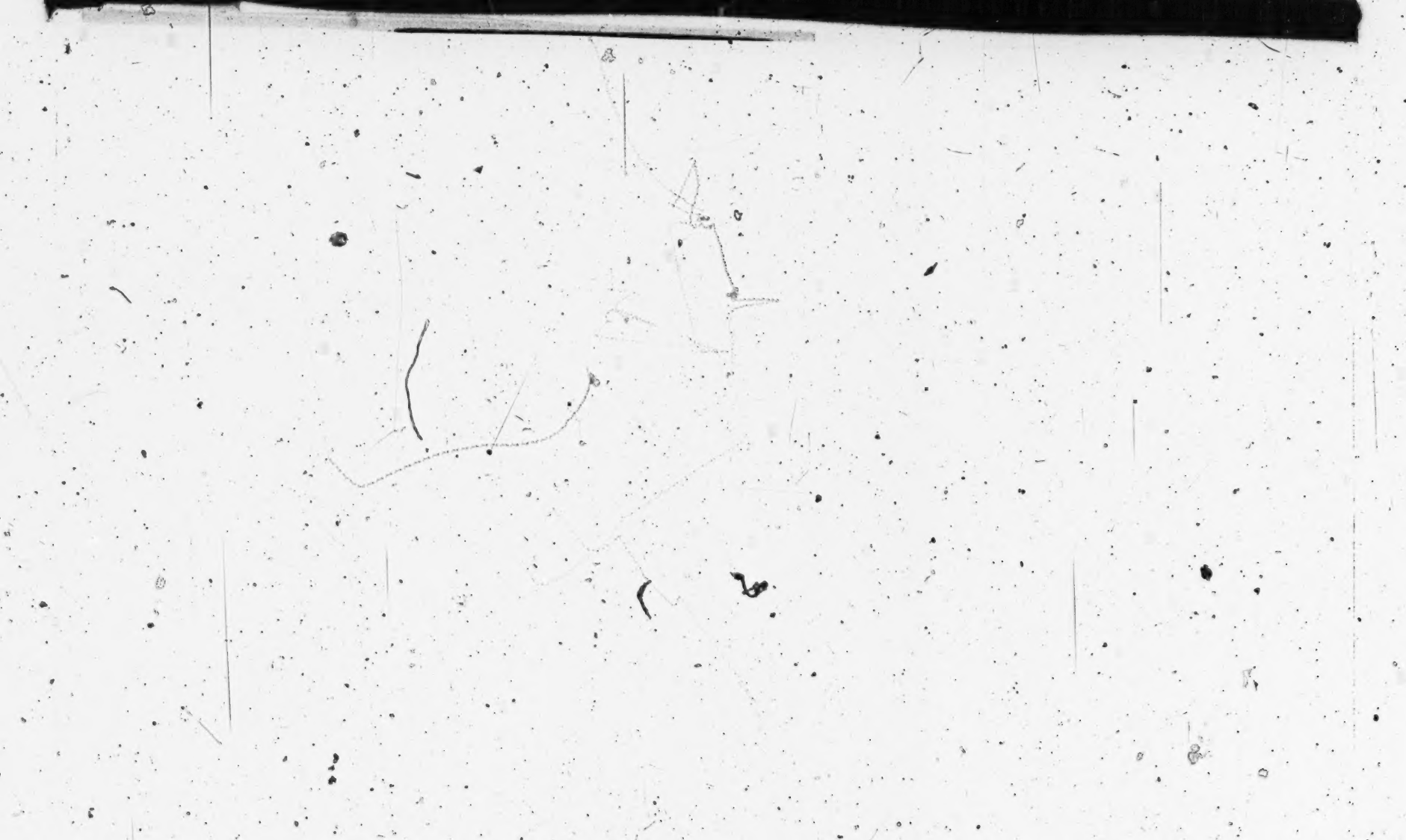
A. N. Williams, President

Class of Service: This is a full-rate telegram or cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

Symbols: DL—Day letter. NL—Night Letter. LC—Deferred Cable. NLT—Cable Night letter. Ship Radiogram.

The filing time shown in the date line on telegrams and day letters is Standard Time at point of origin. Time of receipt is standard time at point of destination.

1944, Jun. 16, A. M. 2:02.



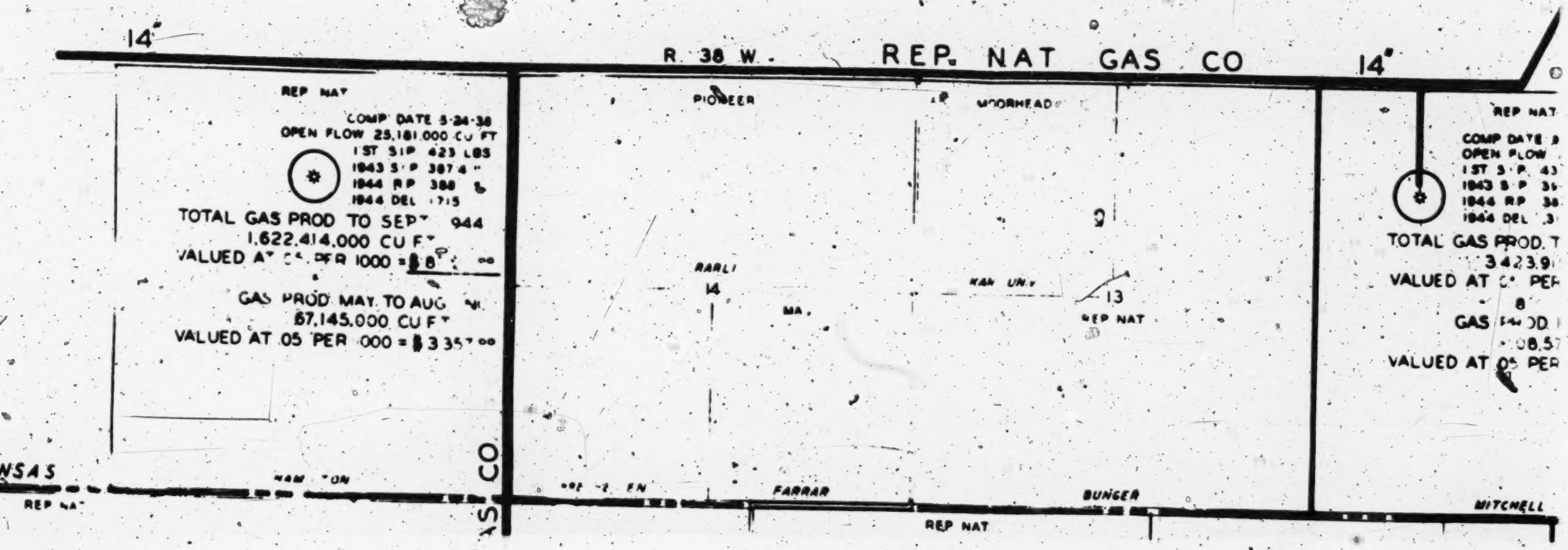
PORTION OF HUGOTON GAS FI

LEASE. PIPELINE AND GAS PRODUCTION MAP OF AN AREA IN THE VICINITY OF THE PEERLESS GAS CO. CRUMP Nº 1 - SEC. 14 TWP. 6, RGE 15 EAST TEXAS COUNTY. OKLAHOMA.

SCALE 4" = 1 MILE

...CTION FOR REPUBLIC NATURAL GAS CO'S EIGHT WELLS TO ...
VALUE A... PER 1000 CU FT = $ 759,524.00

...AS PRODUCTION FOR REPUBLIC NATURAL GAS CO'S EIGHT WELLS FRO...
... AT .05 PER 1000 CU FT = $ 37,898.00



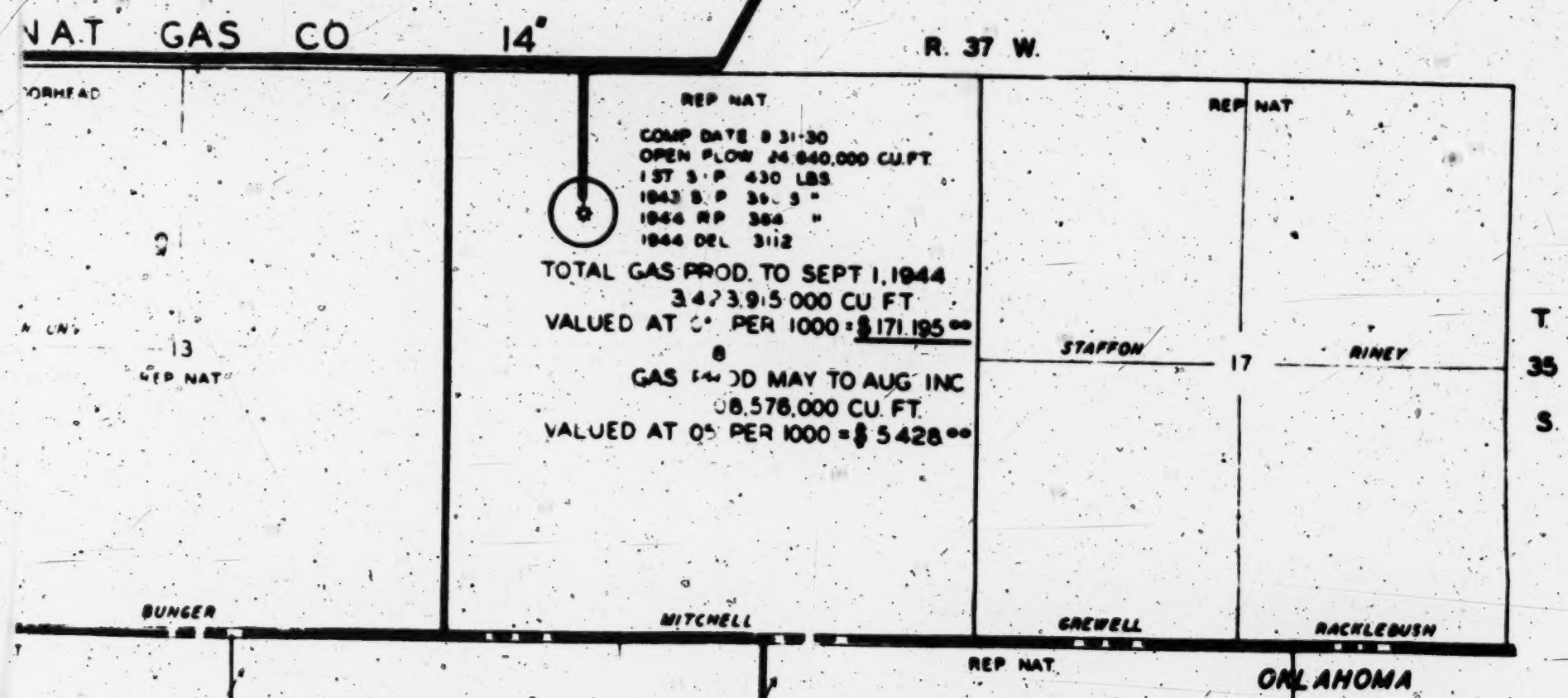
)F HUGOTON GAS FIELD

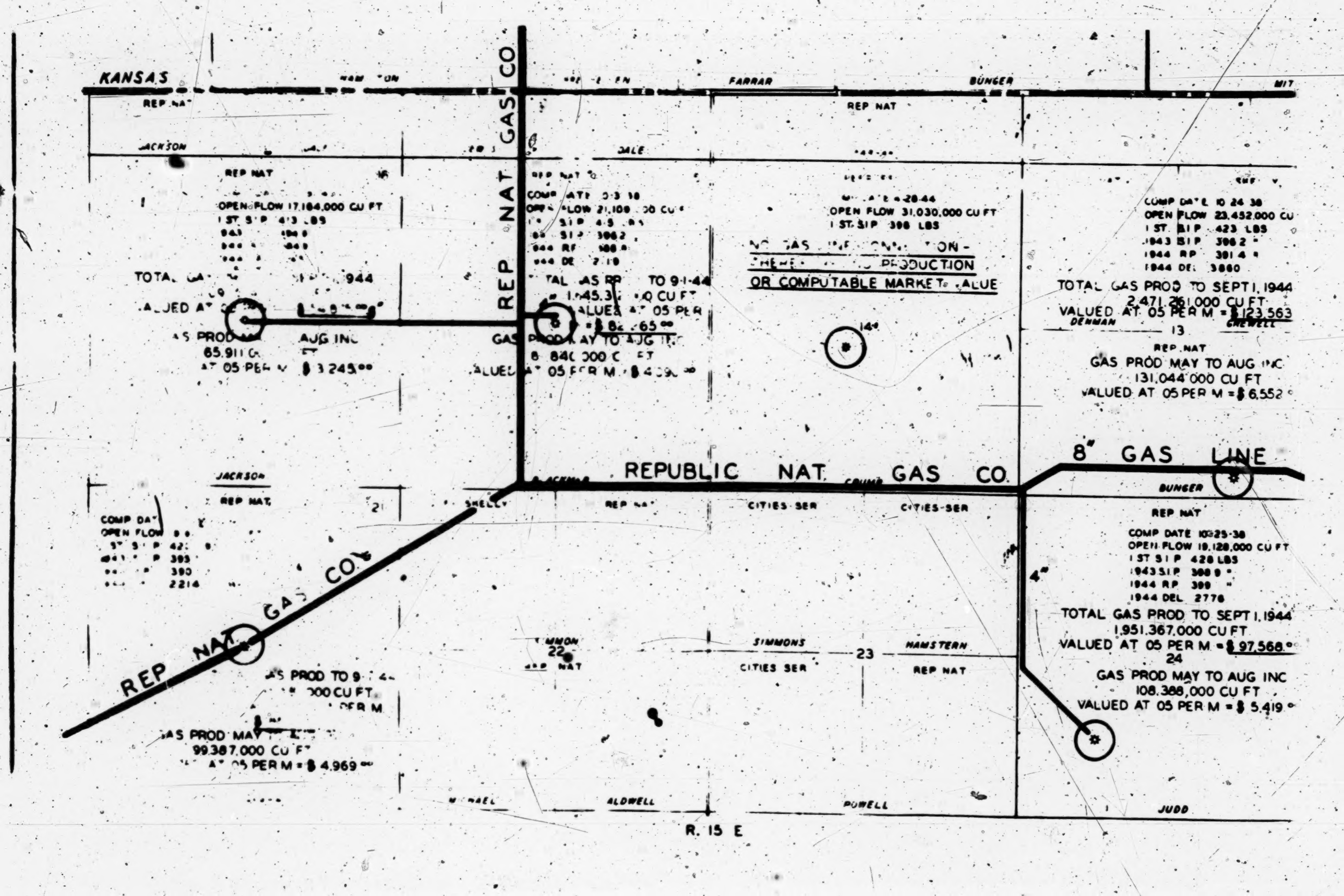
ND GAS PRODUCTION MAP OF AN AREA IN THE
PEERLESS GAS CO. CRUMP Nº 1 - SEC. 14 TWP. 6 N.
S COUNTY OKLAHOMA.

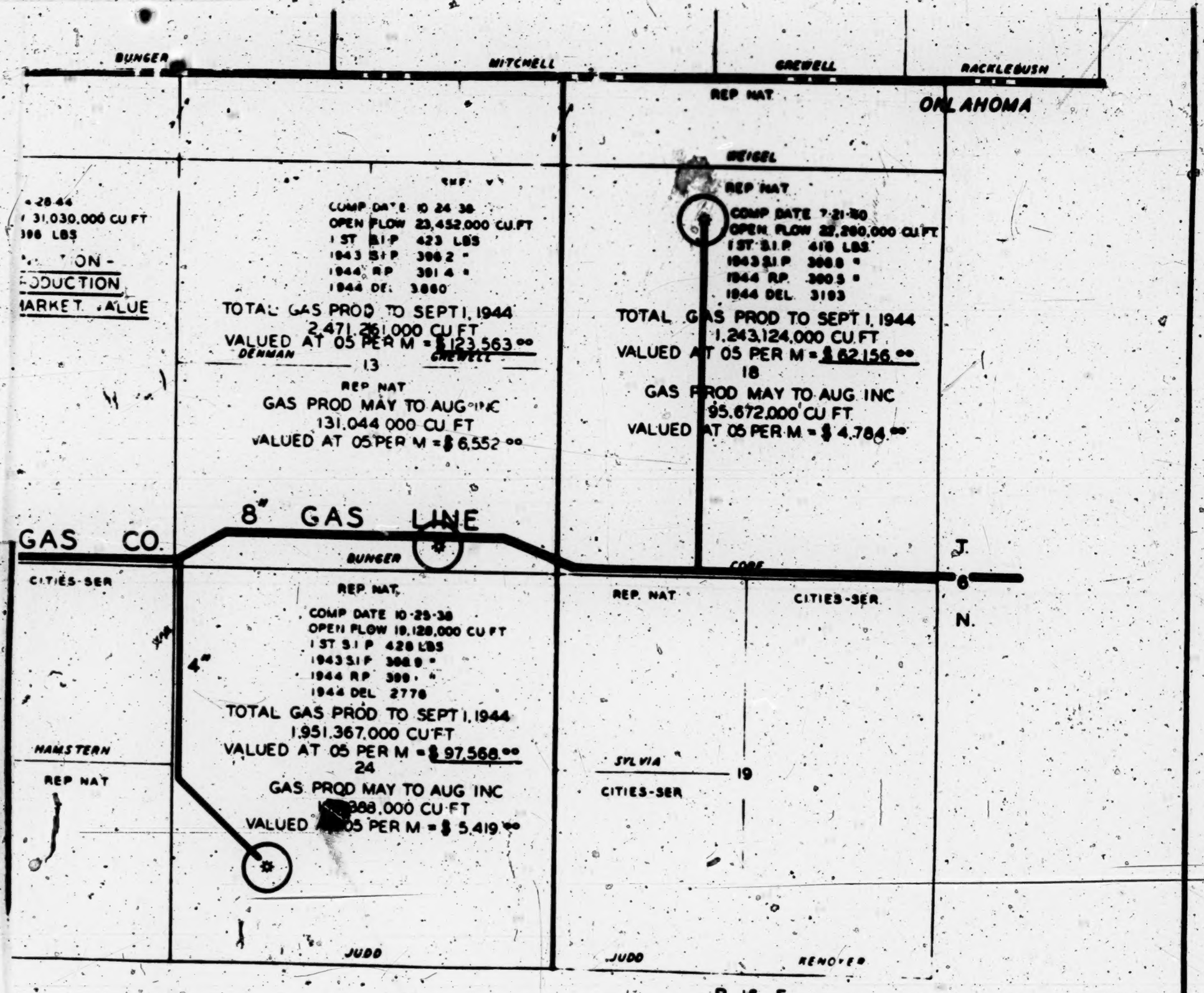
SCALE 4" = 1 MILE

ON FOR REPUBLIC NATURAL GAS CO'S EIGHT WELLS TO SEPT 1, 1944 IS 15,190,488,000 CU FT
R 1000 CU FT = $ 759,524.00

ON FOR REPUBLIC NATURAL GAS CO'S EIGHT WELLS FROM MAY 1, TO SEPT 1, 1944 757,960,000 CU FT
PER 1000 CU FT = $ 37,898.00




KANSAS
FARRAR
BUNGER
REP NAT
JACKSON
DALE
REP NAT GAS CO
OPEN FLOW 17,184,000 CU FT
1 ST S I P 413 LBS
OPEN FLOW 31,030,000 CU FT
1 ST S I P 398 LBS
OR COMPUTABLE MARKET VALUE
COMP DATE 10 24 38
OPEN FLOW 23,452,000 CU
1 ST S I P 423 LBS
1943 S I P 396 2
1944 RP 391 4
1944 DEL 3860
TOTAL GAS PROD TO SEPT 1, 1944
2,471,261,000 CU FT
VALUED AT 05 PER M = $123,563
DENMAN
GREWELL
13
REP NAT
GAS PROD MAY TO AUG INC
131,044,000 CU FT
VALUED AT 05 PER M = $6,552
8" GAS LINE
REPUBLIC NAT GAS CO.
JACKSON
REP NAT
SHELLY
CITIES SER
CITIES-SER
BUNGER
REP NAT
COMP DATE 10-25-38
OPEN FLOW 19,128,000 CU FT
1 ST S I P 428 LBS
1943 S I P 398 9
1944 RP 399
1944 DEL 2776
TOTAL GAS PROD TO SEPT 1, 1944
1,951,367,000 CU FT
VALUED AT 05 PER M = $97,568
24
GAS PROD MAY TO AUG INC
108,388,000 CU FT
VALUED AT 05 PER M = $5,419
4"
REP NAT GAS CO
SIMMONS
HAMSTERN
22
23
CITIES SER
REP NAT
GAS PROD MAY
99,387,000 CU FT
AT 05 PER M = $4,969
ALDWELL
POWELL
JUDD
R. 15 E


BUNGER
MITCHELL
GREWELL
RACKLEBUSH
REP NAT
OKLAHOMA
WEIGEL
REP NAT
COMP DATE 7-21-30
OPEN FLOW 27,280,000 CU FT
1 ST S I P 418 LBS
1943 S I P 398 8 "
1944 R P 380 5 "
1944 DEL 3183
TOTAL GAS PROD TO SEPT 1, 1944
1,243,124,000 CU FT
VALUED AT 05 PER M = $ 62,156 00
18
GAS PROD MAY TO AUG INC
95,672,000 CU FT
VALUED AT 05 PER M = $ 4,784 00
28 44
31,030,000 CU FT
398 LBS
ON-
PRODUCTION
MARKET VALUE
COMP DATE 10 24 38
OPEN FLOW 23,452,000 CU FT
1 ST S I P 423 LBS
1943 S I P 398 2 "
1944 R P 391 4 "
1944 DEL 3880
TOTAL GAS PROD TO SEPT 1, 1944
2,471,261,000 CU FT
VALUED AT 05 PER M = $ 123,563 00
DENMAN
13
GREWELL
REP NAT
GAS PROD MAY TO AUG INC
131,044 000 CU FT
VALUED AT 05 PER M = $ 6,552 00
8" GAS LINE
GAS CO.
BUNGER
CORE
J.
6
N.
CITIES-SER
REP. NAT.
COMP DATE 10-25-38
OPEN FLOW 18,128,000 CU FT
1 ST S I P 428 LBS
1943 S I P 398 9 "
1944 R P 399 4 "
1944 DEL 2778
TOTAL GAS PROD TO SEPT 1, 1944
1,951,367,000 CU FT
VALUED AT 05 PER M = $ 97,568 00
24
GAS PROD MAY TO AUG INC
108,388,000 CU FT
VALUED AT 05 PER M = $ 5,419 00
4"
REP. NAT
CITIES-SER
HAMSTERN
REP NAT
SYLVIA
19
CITIES-SER
JUDD
JUDD
RENO-ED
R 16 E

DB79

Longwa 420 Govt. NL—Washington, D. C., 15; Republic Natural Gas Co. Attn. W. H. Wildes, President, 1505 Federal St., Dal.

Vernon F. Taylor, President, Peerless Oil & Gas Company, Tionesta, Pennsylvania Has Advised The Commission That Peerless Is Arranging For A Market For The Allowable Gas From Peerless's Well On Section 14, Township 6 North, Range 15. In Texas County, Oklahoma With Cities Service Gas Company. He Advises Further That Republic Natural Gas Company Has Agreed To Transport The Gas Without Cost To Peerless To The Cities Service Compressor Station In Texas County Provided Republic Can Secure Clearance From This Commission That By So Doing Republic Will Not Put Itself Under The Jurisdiction Of The Commission Or The Natural Gas Act. Before Action Can Be Taken Upon Such Matter, You Should Request Such Assurance And In Addition To A General Confirmation Of The Transaction As Outlined By Peerless Submit The Following Specific Information: (1) A Description Of The Facilities Of Republic Proposed To Be Utilized In The Transaction And A Sketch Map Thereof: (2) The Distance Of The Proposed Transportation By Republic And The Exact Point Of Delivery To Cities Service: [fol. 499] And (3) A Full Statement Of The Compensation Whether Direct Or Indirect To Be Received By Republic For Such Transportation. The Prompt Submission Of Such Request And Information Will Facilitate Action.

Leon M. Fuquay, Secretary, Federal Power Commission.

14 6 15 (1) (2) (3)

[fol. 500]

(1)

June 16, 1944.

Mr. Leon M. Fuquay, Secretary, Federal Power Commission, Washington 25, D. C.

Dear Sir:

Replying to your telegram of June 16, 1944 referring to the request of Vernon F. Taylor, President of the Peerless Oil and Gas Company. The Peerless Oil and Gas Company

have drilled a well in Section 14, Township 6 North, Range 15, in Texas County, Oklahoma, and we have been further informed that they are now surveying and planning to lay a line from their well south approximately one-half mile to connect into our line which runs across the southern edge of that section as shown by the map attached.

The Republic Natural Gas Company is willing to transport gas, without cost to the Peerless Oil and Gas Company, to any market they may have that would be connected with Republic's system; all provided that the Republic Natural Gas Company can secure clearance from the Federal Power Commission, and if by so doing it will not put Republic Natural Gas Company under the jurisdiction of the Commission or the Natural Gas Act; all under the same conditions as requested in our letter to the Federal Power Commission under the date of March 25, 1944, and which was approved finally by telegram under the date of June 15, 1944.

This letter requests such assuran-e on the part of the Federal Power Commission if it should lend its facilities to the transportation of gas by the Peerless Oil and Gas Company to the Cities Service Gas Company or other market that may be connected to the Republic Natural Gas Company's system.

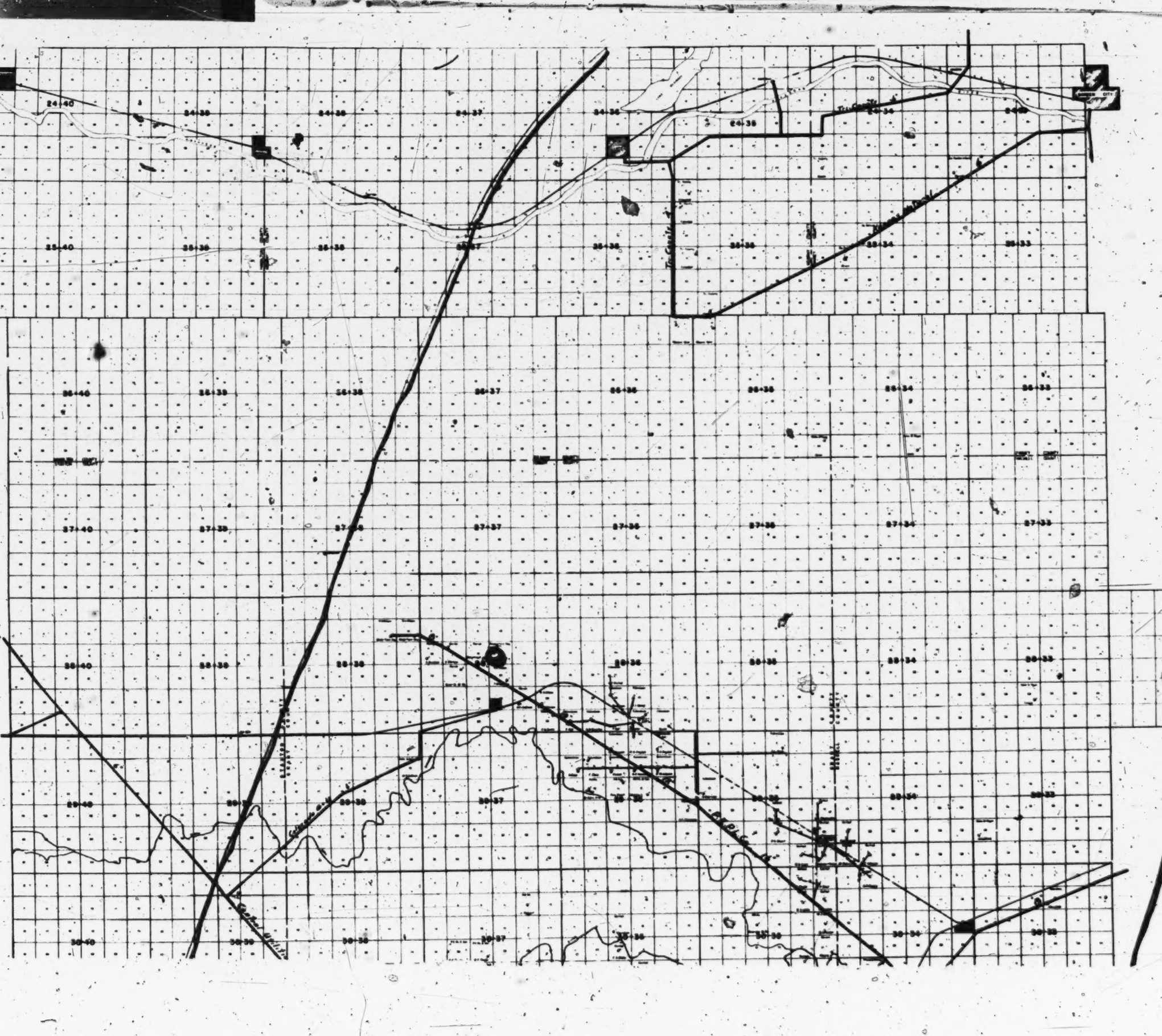
There is attached hereto a map showing our facilities as they will be in the near future. We are now in the process of enlarging our lines to take care of the Cities Service Contract. This gas would enter our 12" line and be carried through our 14" and 12" lines to a point in the southwest corner of Section 6-5-15, Texas County, Oklahoma—a distance of approximately seven miles.

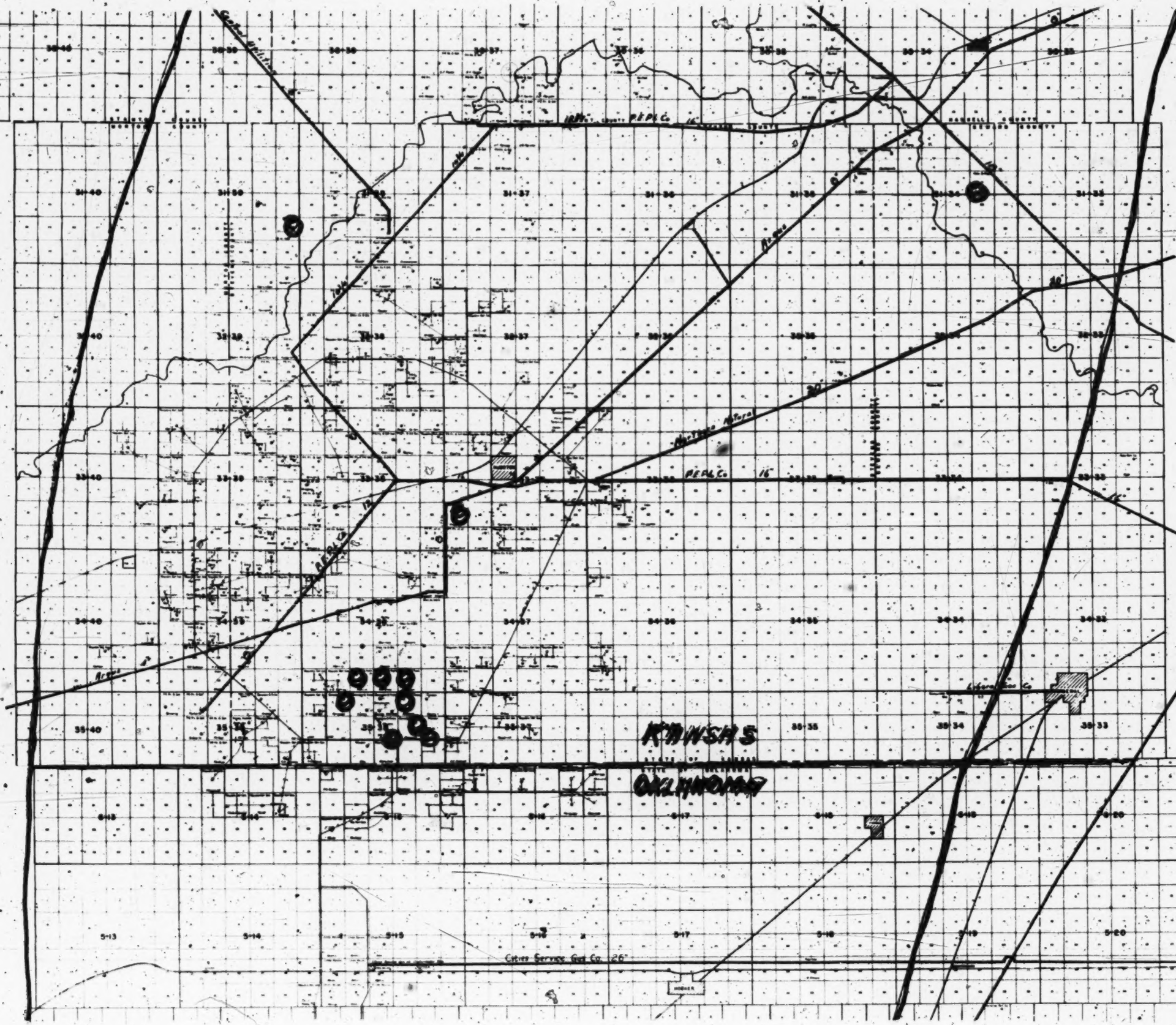
There will be no compensation of any kind, direct or indirect, received by the Republic Natural Gas Company for such transportation.

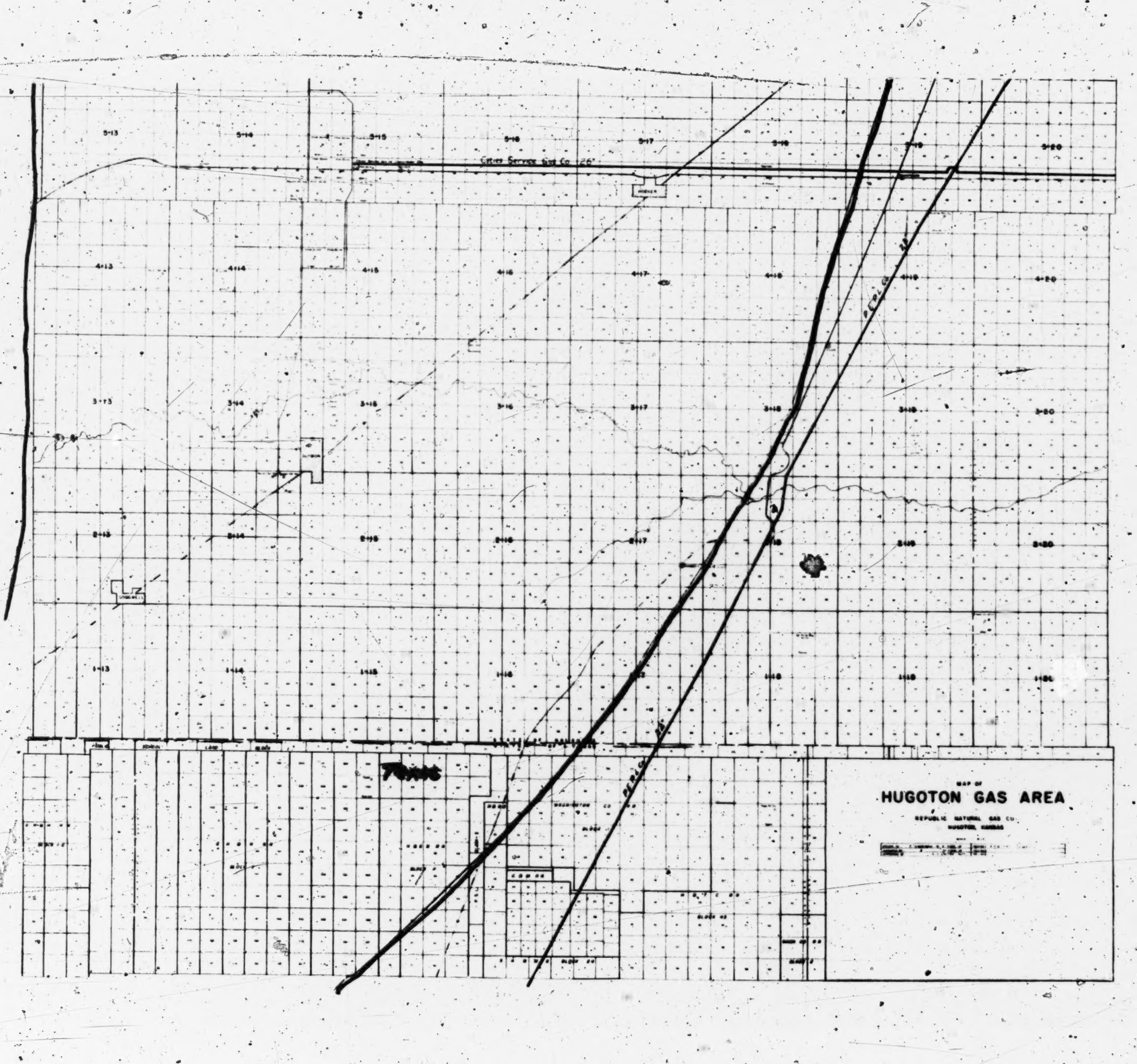
Yours very truly, Alfred Hurlburt, Vice President.

AH:ab.
Attachment.

(Here follow 1 Photolithograph, side folios 501-502)




PEPL Co.
PEPL Co.
KANSAS
OKLAHOMA
Cities Service Gas Co.


Cities Service Gas Co. 26"
PEPL 26"
PEPL 26"
MAP OF
HUGOTON GAS AREA
REPUBLIC NATURAL GAS CO.
HUGOTON, KANSAS

[fol. 503] EXHIBIT 15

Gas Purchase Contract

Missouri Valley Gas Company, et al., and Missouri Valley Pipe Line Company

Dated May 1930

[fol. 504] Gas Purchase Contract

This agreement, Made and entered into this 27th day of May, 1930, by and between Missouri Valley Gas Company (a Delaware corporation), hereinafter called Seller, party of the first part; The Argus Production Company (a Delaware corporation), hereinafter called Argus Company, party of the second part; and Missouri Valley Pipe Line Company (a Delaware corporation), hereinafter called Buyer, party of the third part, witnesseth:

Whereas, Seller and Argus Company have heretofore entered into a contract for the purchase by Seller of natural gas from Argus Company, a copy whereof is hereto attached and marked Exhibit 1 and by this reference made a part hereof;

Whereas, Seller desires to dispose of gas which it may acquire from Argus Company under said gas contract and which may be produced from lands, leases and/or gas rights now owned or which may be hereafter acquired by Seller in the gas fields situated in Stevens and Morton Counties, Kansas, and Texas County, Oklahoma, which counties constitute what is known as the Hugoton Area;

Whereas, Buyer proposes to construct a pipeline to the Omaha, Nebraska District as hereinafter defined, and to provide an extension therefrom to the Hugoton Area;

Whereas, Buyer desires to purchase from Seller a part of the requirements of Buyer's pipeline system and Seller is willing to sell and deliver gas for such purpose to Buyer on the terms and conditions hereinafter set forth;

Whereas, Seller proposes to construct a gathering system for the purpose of collecting the gas to be purchased by it from Argus Company and facilitating the sale and delivery thereof to Buyer as set forth in this agreement; and

Whereas, Argus Company is interested in assisting Seller to dispose of gas to be purchased by Seller from Argus Company and to that end has requested Buyer to enter into this agreement:

[fol. 505] Now, therefore, In consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the respective parties hereto, it is agreed by and between said parties as follows:

I

Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for, gas delivered by Seller hereunder, in the amount, for the prices, and on the terms and conditions hereinafter set forth.

II

The quantity of gas which Buyer agrees to purchase and receive from Seller and Seller agrees to sell and deliver to Buyer shall be, subject to the maximum and minimum amounts hereinafter provided in this article, sixty per centum (60%) of all the gas which Buyer may take or use, or cause to be taken or used, during the term of this contract, for the requirements of its said pipeline system (and any extension thereof which Buyer may make) serving all or a portion of that part of the States of Iowa and Nebraska lying north of the 40th parallel of latitude and east of longitude 98 west of Greenwich, herein referred to as the Omaha District.

The amount of gas to be purchased by Buyer during the twelve-months period following completion of said proposed pipeline of Buyer to Beatrice and Lincoln, Nebraska, and Sioux City, Fort Dodge, Mason City and Des Moines, Iowa, shall, subject to the provisions of Article III hereof, be a minimum of seven billion three hundred million (7,300,000,000) cubic feet of gas, and a maximum of thirty-six billion five hundred million (36,500,000,000) cubic feet of gas. Thereafter the amount of gas to be purchased by Buyer during each succeeding twelve-months period under this agreement, subject to the provisions of Article III hereof, shall be a minimum of nine billion one hundred twenty-five million (9,125,000,000) cubic feet of gas and a maximum of thirty-six billion five hundred million (36,500,000,000) cubic feet of gas.

[fol. 506] Buyer shall take gas each hour in the day in accordance with its market demands and at no time during any hour of the day shall Buyer discontinue taking gas from Seller except in case of shut-down on account of unavoidable accident or other cause not reasonably within its control. Buyer agrees from time to time, so far as practicable, to notify Seller of any anticipated substantial increase in its requirements hereunder; provided, however, that Seller shall not be obliged to sell and deliver gas in excess of the amount which with due diligence it shall have available for delivery hereunder as in this agreement provided.

III

The obligation of Buyer to take or pay for a minimum of seven billion three hundred million (7,300,000,000) cubic feet of gas during the first twelve-months period of minimum deliveries hereunder is conditioned upon Seller having available from wells connected to its said gathering system an open flow capacity at all times during such period of not less than two hundred million (200,000,000) cubic feet of gas per day, and the obligation of Buyer to take or pay for a minimum of nine billion one hundred twenty-five million (9,125,000,000) cubic feet of gas in each succeeding twelve-months period is conditioned upon Seller having available an open flow capacity at all times during each such period from wells connected to its said gathering system of not less than two hundred fifty million (250,000,000) cubic feet of gas per day.

Seller, subject to the foregoing provisions concerning connected open flow capacity and subject to the conditions hereinafter stated, shall always have the right to supply sixty per centum (60%) of the requirements of said pipeline of Buyer, and any extensions thereof made by Buyer, up to a maximum of thirty-six billion five hundred million (36,500,000,000) cubic feet per year so long as the open flow capacity of wells connected to Seller's said gathering system is at all times at least four times the average daily requirement of the four days on which Buyer's requirements [fol. 507] from Seller shall be the greatest in any thirty day period, and Seller is able to make delivery of said amounts at the delivery pressure hereinafter provided.

Argus Company and Seller each agree to use their best endeavors at all times to maintain a supply of gas adequate

to meet Buyer's requirements under all conditions of this contract.

It is understood and agreed that if at any time during the continuance of this contract, the open flow capacity connected with and available for Seller's said gathering system is less than four times the average daily requirement of the four days on which Buyer's requirements from Seller shall be the greatest in any thirty day period (namely sixty per centum of Buyer's total maximum requirements for said pipeline system but not exceeding one hundred million cubic feet per day) and if Seller is not able within ninety days thereafter to cause to be developed, maintained and connected with its said gathering system an open flow capacity of at least four times the average daily requirement of the four days on which Buyer's requirements from Seller shall be the greatest in any thirty day period, then Seller's right to supply sixty per centum of Buyer's requirements shall cease, and in that event Buyer is privileged to contract for and purchase an additional supply of gas elsewhere. Buyer, however, does agree to take as nearly sixty per centum of its requirements from Seller as Buyer's conditions shall then permit.

It is also understood and agreed that if through depletion of the supply of gas in the Hugoton Area or for other cause Seller is unable to deliver the minimum quantities hereinbefore specified as and in the manner hereinbefore provided, Buyer, nevertheless, will continue to purchase gas from Seller and Seller shall continue to sell and deliver gas, until the supply is further depleted or reduced to an extent that Seller for such reason or other cause is unable to deliver to Buyer at the pressure herein provided an average amount of five million cubic feet of gas per day over a period of [fol. 508] six months, in which event, Buyer may at its election cancel this agreement.

In order to determine the open flow capacity of the wells connected to Seller's said gathering system in said Area, Seller shall cause said wells to be opened and tested at regular intervals to be agreed upon by the parties hereto at least twice, and not more than four times, annually, such tests to be made by Seller in the presence and to the reasonable satisfaction of a representative designated by Buyer. Said tests shall be made in accordance with approved modern methods and instruments.

Should Seller allow the total open flow of gas of all pro-

ducing wells connected to its said gathering system to decline to a point where it appears that Buyer's requirements cannot continue to be supplied hereunder, Argus Company and Seller hereby grant to Buyer the right to enter upon the lands and leaseholds and to drill for gas upon Argus Company's and Seller's leases in said Hugoton Area, or any other lands and leaseholds which may be acquired by Argus Company or Seller in said Hugoton Area subsequent to the execution of this agreement from which gas may be taken in the fulfilment of this contract.

Buyer shall pay all expenses of drilling and equipping such well or wells and if such well or wells shall produce gas in commercial quantities Seller shall connect such well or wells to its said gathering system at its expense and Buyer shall take such gas ratably into its pipeline with gas from other wells, and Seller will include such gas in its bills at the same rate as applicable at the time to other gas sold by Seller to Buyer under this agreement. The one-eighth royalty payable in respect of such gas shall be paid by Seller, or Seller shall cause the same to be paid, at the prevailing field rate for such royalty. The balance of the amount chargeable for such gas by Seller shall then be deducted by Buyer from or credited by Buyer upon the bills received by Buyer for gas until such time as Buyer, by reason of such deductions or credits, shall have been fully [fol. 509] reimbursed or repaid for the entire cost of drilling such well or wells.

Said gas well or wells shall then be immediately turned over to Argus Company or to Seller, which ever shall then own the leasehold, and become its property as though it had drilled said well or wells. Gas thereafter shall be taken from said well or wells in the same manner and paid for at the same price and under the same terms and conditions as other gas delivered by Seller to Buyer hereunder.

In the event that Buyer while drilling such well shall encounter oil it shall stop drilling and immediately notify Argus Company or Seller, as the case may be, of such discovery and Argus Company or Seller, as the case may be, shall within ten days determine in what manner and to what extent such oil sand shall be drilled.

In the event that any such well so drilled shall prove to be a commercial oil well, Argus Company or Seller, as the case may be, shall have the option to take over such well and reimburse Buyer for the full cost of drilling and equipping

same, after which such well shall be the property of Argus Company or Seller, as the case may be, as completely as though it had drilled the same.

In the event Argus Company or Seller, as the case may be, shall elect not to take such well, Argus Company and Seller shall assign to Buyer all oil rights in the ten acres immediately surrounding the well, and should Buyer not operate such well as an oil well but shall deepen such well to a gas sand which shall develop into a commercial gas well, then Buyer shall operate such well in the same manner as though it were originally completed as a gas well and account for the gas therefrom in the manner above set out.

Dry holes shall be plugged by Buyer under the supervision of Argus Company or Seller, as the case may be, in accordance with the laws of the State of Kansas or Oklahoma, as the case may be.

[fol. 510] If Buyer shall drill a dry hole or holes under the provisions of this Article, the cost thereof shall be paid for out of gas produced, if any, from any producing well drilled by Buyer under this Section. If Buyer shall drill any well or wells under the provisions of this Article, it shall protect and save harmless Argus Company and Seller, and each of them, from any and all damages and/or claims for damages arising out of drilling of such well or wells.

Buyer agrees to carry liability and workman's compensation insurance in a sum to be agreed upon in favor of Argus Company and/or Seller during any such drilling by Buyer.

IV

The point of delivery of said gas by Seller to Buyer shall be at a point to be designated by Buyer on an extension of said pipeline which is to be constructed by Buyer from the Hugoton Area to the Omaha District, said point to be approximately five miles northeast of the town of Hugoton, Kansas, and near the right-of-way of the Atchison, Topeka & Santa Fe Railroad running through Hugoton.

V

At such time as the aggregate open flow capacity of Seller's wells in said Hugoton Area shall be not less than one hundred fifty million (150,000,000) cubic feet of gas per day and Seller shall accordingly have gas available for delivery to Buyer under this agreement, Seller shall notify

Buyer thereof and forthwith construct a gathering system reaching and connected with said wells, for delivery of gas to Buyer, and Buyer shall construct an extension from its proposed pipeline to and shall connect such extension with said gathering system of the Seller in said Hugoton Area at said point of delivery not later than one (1) year following receipt by Buyer of such notice. Buyer further agrees within two years from date of this agreement to complete its said proposed pipeline to an extent sufficient to enable Buyer to take the minimum quantities of gas to be taken by it as provided in this agreement. Buyer shall have the [fol. 511] right to take gas under this agreement whenever Buyer is ready so to do, but in any event shall commence to take gas hereunder not later than the expiration of said period of one (1) year following receipt by Buyer of the notice in this Article provided for.

VI

The unit of measurement for gas deliverable under this agreement shall be one thousand (1000) cubic feet of gas computed at pressure base of two (2) pounds per square inch above fourteen and four tenths (14.4) pounds absolute pressure, and at a storage and flowing temperature agreed upon for the purpose of this contract at sixty degrees Fahrenheit; corrections to be made for pressures according to Boyle's Law and for actual temperature and for specific gravity according to tests as hereinafter provided.

The correction factors used in computation of values are arrived at as follows:

(a) Actual temperature of the natural gas flowing through the meter or meters shall be obtained by the use of a recording thermometer so installed as properly to record the temperature of the natural gas flowing through the said meter or meters. The weighted hourly temperature recorded each twenty-four hour day shall be used in computing measurements.

(b) The specific gravity of the natural gas shall be determined twice each calendar month by joint tests on days as near the first and sixteenth of the month as practicable or as much oftener as is found necessary in practice. The method of test shall be by Edwards' Balance or by such other method as shall be agreed

upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurement of natural gas deliveries during the first fifteen days of such month or until changed by special test, the special test to be applicable from the day made and through the following days to and including the fifteenth day of such calendar month. The regular test made on the sixteenth of the month shall determine the specific gravity to be used in computations for the measurement of [fol. 512] deliveries in that part of such calendar month commencing with the sixteenth day and continuing until the end thereof or until changed by special test, the special test to be applicable from the day made through the remaining days in such calendar month.

VII

Seller shall install and maintain at its expense in accurate repair at the point of delivery hereinbefore specified, orifice meters to be mutually agreed upon of ample size and type, of standard manufacture and with volume and pressure recording gauges for the accurate measurement of the gas supplied by Seller hereunder, and will cause said meters to be read each day. The meters shall be located at a point to be agreed upon by the parties, not less than one half mile from either the suction side or the discharge side of the compressor station of either party hereto, in order to prevent pulsations of compressors from interfering with accurate measurements. Should the meters be on the property of Buyer, Buyer grants to Seller the right of ingress to and egress from said meters at all times for the purpose of installation, operation, repair, reading and/or removal thereof. The meters and the respective meter readings and meter charts shall be at all reasonable times accessible to inspection and examination by Buyer. The meters shall be calibrated at least once each fifteen days by and at the expense of Seller but in the presence of Buyer if Buyer so elects. Reading, calibration and adjustment of Seller's meters and changing of charts shall be done only by Seller but all data with respect thereto shall at all reasonable times be available to Buyer. If upon any test the percentage of inaccuracy shall be two per centum (2%) or more, registrations thereof shall be corrected at the rate of said

inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, then for a period extending back one half of the time elapsed since the last date of calibration. Following any test, metering equipment found inaccurate shall immediately be restored by Seller to a condition of accuracy. [fol. 513] If for any reason any meter is out of service and/or out of repair so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, the gas delivered during the period such meter is out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of Buyer's check meter if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation;

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

Buyer may at its option and expense install and operate check meters to check Seller's meter, but measurement of gas for the purpose of this agreement shall be by Seller's meters only, except in cases hereinabove specifically provided to the contrary. Check meters shall be of the orifice type and shall be subject, at all reasonable times, to inspection or examination by Seller, but the reading, calibration and adjustment thereof and changing of charts shall be done only by Buyer. Should the point of measurement be located on the premises of Seller, Seller grants to Buyer the right of ingress to and egress from said check meters at all times for the purpose of installation, operation, repair, reading and/or removal thereof.

VIII

The price which Buyer shall pay to Seller for gas delivered hereunder beginning on the date on which delivery shall commence hereunder and extending for fifteen years thereafter shall be seven and one-half cents per thousand cubic feet.

Not less than one year before the expiration of said fifteen year period, Seller and Buyer shall undertake to agree upon the price to be paid by Buyer for gas to be delivered here-
[fol. 514] under after the expiration of said fifteen year period, which price shall be not less than eight cents (8c) nor more than ten cents (10c) per thousand cubic feet. The price so to be agreed upon shall be for a period of three years from and after the expiration of said period of fifteen years. In event that Seller and Buyer shall not, on or before eight months prior to the expiration of said fifteen year period, have reached an agreement as to such price, then the same shall be determined by arbitrators in the manner hereinafter to be provided.

Not less than six months before the expiration of each three year period for which the price shall have been so determined by agreement or arbitration, Seller and Buyer shall endeavor to agree upon the price to be paid by Buyer for gas to be delivered hereunder during the next succeeding three year period, and in the event of their failure within sixty days thereafter to agree, the determination of such price shall be referred to arbitration as hereinafter provided.

In event of arbitration as hereinbefore provided, one arbitrator shall be chosen by Seller, another arbitrator shall be chosen by the Buyer, and the two arbitrators so selected shall choose a third. The arbitrators so chosen shall constitute a board or arbitration, and the decision of the majority of said board shall be final, provided that in no event shall the price fixed by the board be less than eight cents (8c) nor more than ten cents (10c) per thousand cubic feet. The authority of the arbitrators shall in each case be limited to fixing a price for a period of three years next ensuing the then current period.

If either Seller or Buyer in accordance with the foregoing provisions, shall request arbitration and select an arbitrator, the other shall appoint its arbitrator within fifteen days after notice of such selection, and if it fails so to do, the arbitrator selected by the party requesting arbitration shall have the right to decide the question of price. If Seller and Buyer each shall have selected an arbitrator, and such arbi-
[fol. 515] trators do not within twenty days after their selection agree upon and appoint a third arbitrator, the judge of the District Court of the United States in which the delivery

point under this agreement shall be located shall be requested either to act as an arbitrator or to select a third arbitrator.

If after the constitution of a board of arbitrators in any case as above provided, said board shall fail, within a period of forty days thereafter, to reach a decision, said board shall be discharged and a new board shall be created in like manner as if no board had previously been chosen.

Each party shall pay the arbitrator of its own selection, and both parties share and share alike shall pay the third arbitrator.

It is expressly stipulated that delivery of gas by Seller under this agreement shall not be suspended because of delay in determination of the rate applicable to delivery of gas for any period, but that delivery shall continue at the last previously effective rate, and upon determination of the rate for the period for which the rate is under consideration, the same shall be applied retroactively to gas previously delivered during such period.

IX

The gas to be delivered hereunder is assumed, but not guaranteed, to have an average heat value of one thousand B.T.U.'s per cubic foot. If in any calendar month the average heat value of such gas shall fall below nine hundred fifty (950) B.T.U.'s per cubic foot the price to be paid by Buyer to Seller for gas delivered during such month shall be decreased proportionately to the reduction in heat value below one thousand B.T.U.'s per cubic foot. Buyer at no time shall be required to receive gas from Seller which has a heat value of nine hundred (900) or less B.T.U.'s per cubic foot.

X

Seller shall render to Buyer on or before the tenth day of each calendar month a statement of the amount of gas [fol. 516] delivered hereunder by Seller during the preceding calendar month and shall accompany said statement with supporting meter charts which charts shall be returned to Seller after examination. Buyer agrees to make payment on or before the twenty-fifth day of each month for all gas delivered hereunder during the preceding month. Should Buyer fail to pay any amount due to Seller when due, unless in good faith contested, interest thereon shall accrue at the

rate of six per centum (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay, unless in good faith contested, continues for sixty (60) days, Seller may suspend deliveries of gas hereunder, but the exercise of such rights shall be in addition to any and all other remedies available to Seller.

It is understood and agreed by the parties hereto that upon all bills for gas sold by Seller to Buyer under this agreement, Buyer shall be entitled to and shall receive credit, as, upon the basis, and in the manner provided in and by Article of Agreement dated April 17, 1930, between Moody-Seagraves Company, Seller, Argus Company and The United Light and Railways Company, North American Light & Power Company and Lone Star Gas Corporation.

XI

The gas contracted to be sold by Seller hereunder is gas to be produced by Argus Company and/or acquired by Seller from lands, leases and/or gas purchase contracts now owned or hereafter acquired by Argus Company or Seller in the gas fields known as the Hugoton Area, located in Stevens and Morton Counties, Kansas, and Texas County, Oklahoma. Seller shall not be required to supply and Buyer shall not be required to take gas produced or acquired from any other area.

XII

The gas delivered hereunder shall be what is known as "sweet" gas and shall be natural gas as produced in its [fol. 517] natural state from the wells, except that Seller may extract or permit the extraction of natural gasoline from said natural gas; provided that Seller shall not subject said gas nor permit said gas to be subjected to any treatment in the extraction of natural gasoline which shall substantially change the chemical composition of any of the component parts of said gas, or permit or cause the admission of oxygen, or which will dilute said gas. Seller is to tender delivery to Buyer only of natural gas which is of merchantable quality, free from dirt, oil, water or other foreign substances.

XIII

The gas deliverable hereunder shall be delivered by Seller to Buyer through Seller's said gathering system at the high-

est pressure which can be efficiently maintained by the natural pressure of gas from the wells connected to Seller's said gathering system; provided, however, that such gas shall never be delivered at a pressure of less than fifty (50) pounds to the square inch. Said gathering system shall be so designed as to deliver said gas to Buyer through pipelines of ample size to conform to good practice so that the pressure drops through said lines from wells to point of delivery to Buyer shall be as small as practicable.

XIV

The obligations of Seller hereunder are subject to the reservation of sufficient gas for each of the following purposes:

(a) Drilling operations of Argus Company in the Hugoton Area for gas for resale by Seller under this agreement;

(b) To perform the obligations of Argus Company or Seller for delivery of gas to the lessors under the terms of the leases covering lands referred to in Section XI hereof.

Neither Argus Company nor Seller has any existing contract for the sale of gas from said Hugoton Area which is or will be entitled in any manner to priority over the rights of [fol. 518] Buyer, as herein set forth, to receive from Seller gas produced or purchased in said Hugoton Area. And neither Argus Company nor Seller shall subsequently to the date of this agreement sell, or contract to sell, any gas produced or purchased by Argus Company or produced or purchased by or for Seller in said Hugoton Area unless Seller shall then and thereafter have an excess of gas connected to its said gathering system over and above the quantity required to maintain an open flow equal to at least ten times the daily requirements of Buyer from time to time under this agreement.

XV

It is provided always that this agreement is made and accepted with full notice or knowledge of and subject to such well known causes and accidents as in the course of the business of the production, transportation, distribution and de-

livery of natural gas may, without any fault or negligence of the parties, prevent, hinder or restrain the delivery or reception of natural gas under this contract in whole or in part; and it is understood that the obligations of the Seller to make deliveries hereunder shall be contingent upon and subject to causes beyond its control, such as breakage, freezing, stoppage in lines, strikes, action of governmental or state agencies, and/or any other similar or dissimilar causes or unforseen or fortuitous events beyond the control of Seller; and it is likewise understood that the obligations of Buyer to take gas from Seller shall be contingent upon and subject to causes beyond Buyer's control, such as breakage, freezing, stoppage in lines, strikes, action of governmental or state agencies, and/or other similar or dissimilar causes or unforeseen or fortuitous events beyond the control of Buyer.

XVI

Seller undertakes and agrees to maintain, renew, and be entirely responsible for its gathering system, pipelines, equipment, and facilities, and for gas therein, passing therethrough, or escaping therefrom, up to, but not beyond, the [fol. 519] point of delivery hereinbefore provided, and further agrees that it will hold harmless and indemnify Buyer from all loss, damage, expense or liability in any manner connected therewith. The Buyer agrees to maintain, renew, and be entirely responsible for its pipelines and facilities, and for gas therein, passing therethrough, or escaping therefrom, beyond said point of delivery, and further agrees that it will indemnify and hold harmless the Seller for any and all loss, damage, expense or liability for gas present, passing through, or escaping from Buyer's said pipe lines extending beyond said point of delivery.

It is expressly stipulated and agreed that Buyer shall not be liable for any damage to the property of Seller, or for any injury to any employee of Seller, or other person upon or about the premises, gathering system, pipelines, or facilities of Seller, occasioned by any fluctuation in gas pressure due to the operation of the compressor stations of Buyer, and Seller expressly agrees to protect, save harmless and indemnify Buyer from any and all loss, damage, or expenses by reason of any such accident, damage or injury.

And it is also expressly stipulated and agreed that Seller shall not be liable for any damage to the property of Buyer,

or for any injury to any employee of Buyer, or other person upon or about the premises, pipelines, or facilities of Buyer, occasioned by any fluctuations in gas pressure due to the operation of the compressor stations of Seller, and Buyer expressly agrees to protect, save harmless and indemnify Seller from any and all loss, damage or expenses by reason of any such accident, damage or injury.

XVII

As to all gas produced by Argus Company and delivered and to be delivered to Buyer hereunder by Seller, Argus Company and Seller warrant title thereto and the right to sell the same and that such gas shall be clear and free from all liens and adverse claims, and as to all gas not produced by Argus Company and delivered or to be [fol. 520] delivered to Buyer hereunder by Seller, Seller warrants title thereto and the right to sell the same and that such gas shall be clear and free from all liens and adverse claims. In case of any adverse claim respecting any of said gas, Buyer may retain the purchase price thereof without interest until such claim has been finally determined, or until Seller shall have furnished Buyer bond, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer. Argus Company and Seller each agree, if notified thereof by Buyer, to indemnify Buyer against payment of any tax now or hereafter imposed by any governmental authority upon the production of said gas, or the operation of Seller's wells or gas properties of Argus Company and/or Seller. Buyer shall pay all taxes imposed by lawful governmental authority upon the sale and/or distribution by Buyer of said gas.

XVIII

Argus Company agrees to cause due diligence to be exercised in the operation of its gas wells to be connected to Seller's gathering system. Seller agrees to keep its gathering system in good repair and to operate the same, and to cause the gas wells of Argus Company to be operated, in a skillful and methodical manner. Argus Company and Seller reserve the right to abandon any wells and/or surrender or permit to lapse any leases, mineral rights and/or gas purchase contracts which in Seller's judgment are deemed to be unproductive, unprofitable or without sub-

stantial value, but in the event of any voluntary surrender of any gas leases or gas purchase contracts, Argus Company or Seller, as the case may be, shall first offer the same to Buyer and Buyer shall have thirty days within which to decide whether it will take over and assume any such lease or contract at a price not less favorable than Seller or Argus Company, as the case may be, shall offer to any one else.

[fol. 521]

XIX

Subject to earlier termination under the provisions hereof, this agreement shall continue in force so long as Seller shall have gas available for sale to Buyer, as and to the extent provided in, and subject to the terms and conditions of, this agreement.

XX

This agreement is made subject to all valid present and future orders, rules and regulations of any duly constituted authority having jurisdiction.

XXI

This agreement shall bind and inure to the benefit of the successors and assigns of the respective parties hereto.

XXII

Argus Company expressly covenants and agrees with Buyer that it will at all times further, and not obstruct, the performance by Seller of the agreements, covenants and undertakings of Seller in this contract contained, and Argus Company further guarantees to Buyer the faithful and punctual compliance by Seller with each and all of Seller's said agreements.

XXIII

This agreement may be executed in several counterparts, and all such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective officers [fol. 522] thereunto duly authorized, and their corporate

seals to be hereunto affixed, on the day and year as above written.

The Argus Production Company, by D. B. Cogswell, President. Attest: C. F. Channing, Assistant Secretary. (Seal)

Missouri Valley Gas Company, by Henry M. Brown, Vice President. Attest: Warren J. Dale, Assistant Secretary. (Seal)

Missouri Valley Pipe Line Company, by Wm. Chamberlain, President. Attest: Thos. K. Humphrey, Assistant Secretary. (Seal)

[fol. 523] EXHIBIT I

This agreement, made and entered into this 25th day of March 1930, by and between The Argus Production Company, a Delaware corporation, hereinafter called Seller, and Missouri Valley Gas Company, a Delaware corporation, hereinafter called Buyer,

Witnesseth: Whereas, Seller owns the gas rights (subject to the royalties to be paid thereon) on approximately 300,000 acres of oil and gas leases, situated in the gas field located principally in Stevens and Morton Counties, Kansas, and Texas County, Oklahoma, and commonly known as the Hugoton Area; and.

Whereas, Buyer desires to purchase all of the gas which Seller may produce from said lands and Seller is willing to sell said gas to Buyer on the terms and conditions hereinafter set forth:

Now, therefore, in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the respective parties hereto, it is agreed by and between said parties, as follows:

I

Seller hereby sells and agrees to sell and deliver to Buyer, and Buyer agrees in the usual conduct of its business to purchase and receive from Seller, at the mouth of the wells, all of the merchantable gas in its natural state as produced, including all hydrocarbons and other components,

from all gas wells now drilled and which may hereafter be drilled on all leases and lands now owned or which may hereafter be acquired by Seller in the said Hugoton Area; Seller reserving only sufficient gas for development and operation of said lands and leases and such other gas as lessors in said leases are entitled to use under the terms thereof.

[fol. 524]

II

The gas to be delivered hereunder shall be measured at measuring stations properly equipped with meters of standard type which shall be furnished, installed, operated and maintained by and at the expense of Buyer.

The unit of measurement for natural gas deliverable hereunder shall be one thousand (1,000) cubic feet of natural gas computed at a base pressure of two (2) pounds above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch, a standard base and flowing temperature of sixty degrees (60°) Fahrenheit and a standard gravity of six-tenths, and the gas measured hereunder shall be computed into such units.

III

Buyer shall pay Seller for all gas delivered hereunder at the following rates:

Three and one-half cents (3½¢) per thousand cubic feet for the first three years;

Four cents (4¢) per thousand cubic feet for the next three years;

Four and one-half cents (4½¢) per thousand cubic feet for the next three years;

Five cents (5¢) per thousand cubic feet thereafter.

IV

Buyer agrees to pay seller on or before the twenty-fifth day of each month for all gas delivered hereunder during the preceding month according to the measurement and computations and at the prices hereinbefore provided for.

V

Buyer shall have an easement on such premises, to the extent that Seller has the same, for the purpose of install-\

ing, operating, and maintaining its gathering lines, regula-
[fol. 525] tors, meters, and other equipment necessary to enable Seller to take gas hereunder, with the right to remove the same. Seller shall have access to Buyer's measuring equipment at all reasonable times but reading, calibrations and adjustments thereof and changing of charts shall be done only by Buyer.

VI

Buyer shall not be required to take gas hereunder from any well of Seller except when such well shall be capable of delivering gas in commercial quantities into Buyer's gathering system at the point of connection of said well against the working pressure therein. Buyer shall have the right at its option to install field compressors or to connect Seller's well or wells with existing field or main line compressors and take gas therefrom.

VII

Buyer will endeavor so far as operating conditions will permit to protest the interests of Seller against drainage from offset wells.

VIII

Seller shall reasonably develop its properties in such manner as to be able to furnish Buyer with all of its requirements of gas from the premises covered hereby. If Seller, upon notice from Buyer, shall fail to drill additional wells deemed necessary to Buyer, then Buyer may enter upon the properties of Seller and at its expense drill such wells thereon as it may deem necessary and Buyer shall be reimbursed for actual expenditures made by it in drilling and equipping said wells out of the first moneys thereafter accruing to Seller for gas taken by Buyer hereunder.

IX

Neither the Seller nor the Buyer shall be held responsible or liable in damages for the acts or conduct of the other.

X

This agreement shall continue and remain in full force and effect as long as the leases or any of them now owned by Seller or which may hereafter be acquired by Seller in

[fol. 526] said Hugoton Area or any renewals or extensions thereof shall continue in full force and effect.

XI

Seller warrants the title to all gas delivered hereunder, except as to royalties and agrees, if notified by Buyer, to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse legal claim of any and all persons to said gas, except as to royalties. Buyer shall pay all royalties direct to the royalty owners. Seller will execute division orders and cause the same to be executed by all persons owning any interest in any of said gas showing such interest respectively and also transfer orders from time to time as required by and upon the regular forms of Buyer.

XII

This agreement is subject to all present and future valid orders, rules and regulations of any regulatory body of the Federal Government and the State or States in which said premises are situated.

XIII

All covenants, stipulations, terms and conditions of this agreement shall be binding upon the successors and assigns of the respective parties hereto.

In witness whereof, this agreement has been executed the day and year first written.

The Argus Production Company, by (Signed) B. A. Hardey, Vice President. Attest: (Signed) Carl Van Riper, Secretary. (Seal)

Missouri Valley Gas Company, by (Signed) D. B. Cogswell, President. Attest: (Signed) Henry M. Brown, Assistant Secretary. (Seal)

[fol. 527] Guaranty

Whereas, at the request of Moody-Seagraves Company, a Delaware corporation, The United Light and Railways Company, North American Light & Power Company and Lone Star Gas Corporation, all Delaware corporations and hereinafter referred to as Purchasers, have caused Missouri Valley Pipe Line Company, a Delaware corporation, to

enter into an agreement in writing dated May 27, 1930, with Missouri Valley Gas Company, a Delaware corporation, and The Argus Production Company, a Delaware corporation, providing *inter alia* for the purchase by said Missouri Valley Pipe Line Company from said Missouri Valley Gas Company of natural gas in accordance with the provisions of said agreement:

Now, therefore, for value received said Moody-Seagraves Company hereby guarantees to Purchasers and to said Missouri Valley Pipe Line Company, The United Light and Railways Company, North American Light & Power Company and Lone Star Gas Corporation, and each and all of them, their respective successors and assigns, the due and punctual performance by said The Argus Production Company and said Missouri Valley Gas Company of each and all of their respective agreements, covenants and undertakings contained in said agreement dated May 27, 1930.

In witness whereof, the said Moody-Seagraves Company has caused these presents to be duly executed in its name and behalf, and its corporate seal to be hereto affixed and attested by its proper officers thereunto duly authorized, this 27th day of May, 1930.

Moody-Seagraves Company, by O. R. Seagraves, Vice President. Attest: Warren J. Dale, Assistant Secretary. (Seal.)

[fol. 528] Recording Data

Stevens County, Kansas

Filed for record on August 15, 1932, and duly recorded in book K of Miscellaneous Records at page 287, office of the Register of Deeds.

Note: This instrument recorded only in Stevens County, Kansas.

[fol. 529] Amendatory and Supplemental Agreement
Dated as of July 1, 1932

Amending and Supplementing Gas Purchase Contract
Dated May 27, 1930

Missouri Valley Gas Company and The Argus Production Company and Northern Gas and Pipe Line Company.

[fol. 530] This Amendatory and Supplemental Agreement made and entered into as of the first day of July, 1932, by and between Missouri Valley Gas Company, a Delaware corporation herein after called "Seller," of the first part, The Argus Production Company, a Delaware corporation, hereinafter called "Argus Company," of the second part, and Northern Gas and Pipe Line Company (formerly Missouri Valley Pipe Line Company), a Delaware corporation, hereinafter called "Buyer," of the third part, Witnesseth; that

Whereas, the parties hereto, under date of May 27, 1930, entered into an agreement in writing, hereinafter referred to for convenience as the "Original Contract," covering, *inter alia*, the sale by Seller to Buyer of natural gas as and upon the terms and conditions in the Original Contract set forth; and

Whereas, differences have arisen between said parties with reference to the Original Contract, and Buyer maintains that Seller and Argus Company, and each of them, have defaulted in their joint and several obligations thereunder and in relation thereto, and that the Original Contract is amenable to cancellation or rescission; and

Whereas, Seller and Argus Company desire relief from their obligations to maintain the extensive gas reserves required to be maintained for the purpose of the Original Contract, and thereby to be relieved of large expenditures for rentals, for development and for off-set wells necessary to preserve such gas reserves; and

Whereas, Seller desires that Buyer's right to receive upon bills for gas sold to Buyer under the Original Contract credit for and to retain five cents (5c) for each thousand cubic feet of gas so sold to Buyer for application to the principal of notes of Argus Company as provided by and pursuant to the provisions of Section X of the Original [fol. 531] Contract be restricted or modified or supplanted

by a new provision for the retirement of said indebtedness; and

Whereas, Seller and Argus Company have proposed that their burdens in respect of the maintenance of said extensive gas reserves be curtailed or modified, and that the aforementioned provisions of Section X of the Original Contract, providing for said credit upon bills for gas sold by Seller to Buyer, be restricted, modified or supplanted, and that in consideration that Buyer consent to such proposals and that Buyer waive its claims with reference to defaults under or in relation to the original contract and upon the further consideration and condition that the minimum amount of gas to be purchased by Buyer in each successive twelve (12) months period, commencing January 1, 1933, shall be increased as and subject to the conditions hereinafter mentioned or referred to, the price payable for gas purchased under the Original Contract from and after January 1, 1933, shall be reduced and that a new agreement be entered into through execution and delivery of an agreement amending and supplementing the Original Contract; and

Whereas, Buyer has manifested its consent to the acceptance of the proposals of Seller and Argus Company outlined in the foregoing paragraph, and has agreed to the making of this amendatory and supplemental agreement;

Now, therefore, in consideration of the premises and of the agreements and covenants of the respective parties hereto, hereinafter set forth, it is agreed by and between said parties as follows:

The Original Contract, dated May 27, 1930, between the parties hereto shall be and hereby is declared to be amended and supplemented as hereinafter stated:

[fol. 532] A

Article II of the Original Contract, as heretofore understood and applied by the parties hereto, shall be and continue in force until midnight of the 31st day of December, 1932, from and after which hour said Article II shall be and hereby is declared amended so as henceforth to read as follows:

"II

"The quantity of gas which Buyer agrees to purchase and receive from Seller and Seller agrees to sell and de-

liver to Buyer shall be, subject to the maximum and minimum amounts hereinafter provided in this Article, sixty per centum (60%) of all the gas which Buyer may take or use, or cause to be taken or used, during the term of this contract, for the requirements of Buyer for serving from its said pipe line (and any extension thereof which Buyer may make) all or a portion of that part of the states of Iowa and Nebraska lying north of the 40th parallel of latitude and east of longitude 98 west of Greenwich, herein referred to as the Omaha District.

"From and after January 1, 1933 the amount of gas to be purchased by Buyer under this agreement during each twelve-months period succeeding January 1, 1933, subject to the provisions of Article III hereof, shall be a minimum of 12,500,000,000 cubic feet of gas and a maximum of 36,500,000,000 cubic feet of gas."

"Buyer shall take gas each hour in the day in accordance with its market demands and at no time during any hour of the day shall Buyer discontinue taking gas from Seller except in case of shut-down on account of unavoidable accident or other cause not reasonably within its control. Buyer agrees from time to time, so far as practicable, to notify Seller of any anticipated [fol. 533] substantial increase in its requirements hereunder; provided, however, that Seller shall not be obliged to sell and deliver gas in excess of the amount which with due diligence it shall have available for delivery hereunder as in this agreement provided."

B

From and after midnight of December 31, 1932, Article III of the Original Contract shall be amended so as thenceforth to read as follows, namely:

"III

"The obligation of Buyer to take or pay for a minimum of 12,500,000,000 cubic feet of gas in each twelve-months period succeeding January 1, 1933 is conditioned upon Seller having available for Buyer from wells connected to its said gathering system and owned by or subject to contract to Argus Company an open

flow capacity at all times during each such period of not less than 342,465,750 cubic feet of gas per day.

"Seller, subject to the foregoing provisions concerning connected open flow capacity and subject to the conditions hereinafter stated, shall always have the right to supply sixty per centum (60%) of the aforesaid requirements of Buyer up to a maximum of thirty-six billion five hundred million (36,500,000,000) cubic feet per year so long as the open flow capacity of said wells connected to Seller's said gathering system is at all times at least four times the average daily requirement of the four days on which Buyer's requirements from Seller shall be the greatest in any thirty day period, and Seller is able to make delivery of said amounts at the delivery pressure hereinafter provided.

[fol. 534] "Argus Company and Seller each agree to use their best endeavors at all times to maintain a supply of gas adequate to meet Buyer's aforesaid requirements under all conditions of this contract.

"It is understood and agreed that if at any time during the continuance of this contract, the open flow capacity of said wells of or subject to contract to Argus Company, connected with Seller's gathering system available for Buyer is less than four times the average daily requirement of the four days on which Buyer's requirements hereunder from Seller shall be the greatest in any thirty day period (meaning by Buyer's said requirements hereunder sixty per centum of Buyer's total maximum requirements for serving said Omaha District from its said pipe line, but not exceeding one hundred million cubic feet per day) and if Argus Company and Seller are not able within ninety days thereafter to cause to be developed, maintained and connected with its said gathering system wells owned by or subject to contract to Argus Company having an open flow capacity of at least four times the average daily requirement of the four days on which Buyer's said requirements hereunder from Seller shall be the greatest in any thirty day period, then Seller's right to supply sixty per centum of Buyer's said requirements shall cease, and in that event Buyer is privileged to contract for and purchase an additional supply of gas elsewhere. Buyer, however, does agree to take as nearly sixty per centum of its aforesaid requirements

from Seller as Buyer's conditions and gas purchase obligations contracted by it shall then permit.

"It is also understood and agreed that if through depletion of the supply of gas in the Hugoton Area or for other cause Seller is unable to deliver the minimum quantities hereinbefore specified as and in the manner hereinbefore provided, Buyer, nevertheless, will continue to purchase gas from Seller and Seller shall con-
[fol. 535] tinue to sell and deliver gas, until the supply is further depleted or reduced to an extent that Seller for such reason or other cause is unable to deliver to Buyer at the pressure herein provided an average amount of five million cubic feet of gas per day over a period of six months, in which event, Buyer may at its election cancel this agreement.

"In order to determine the open flow capacity of the wells connected to Seller's said gathering system in said Hugoton Area, Seller shall cause said wells to be opened and tested at regular intervals to be agreed upon by the parties hereto at least twice, and not more than four times, annually; such tests to be made by Seller in the presence and to the reasonable satisfaction of a representative designated by Buy r. Said tests shall be made in accordance with approved modern methods and instruments.

"Should Seller allow the total open flow of gas of all producing wells of or subject to contract to Argus Company connected to Seller's said gathering system to decline to a point where it appears that Buyer's requirements hereunder cannot continue to be supplied hereunder, Argus Company and Seller hereby grant to Buyer the right to enter upon the lands and leaseholds and to drill for gas upon Argus Company's and Seller's leases in said Hugoton Area, or any other lands and leaseholds which may be acquired by Argus Company or Seller in said Hugoton Area subsequent to the execution of this agreement.

"Buyer shall pay all expenses of drilling and equipping such well or wells and if such well or wells shall produce gas in commercial quantities Seller shall connect such well or wells to its said gathering system at its expense and Buyer shall take such gas ratably into its pipeline with gas from other wells, and Seller will include such gas in its bills at the same rate as appli-

[fol. 536] cable at the time to other gas sold by Seller to Buyer under this agreement. The one-eighth royalty payable in respect of such gas shall be paid by Seller, or Seller shall cause the same to be paid at the prevailing field rate for such royalty. The balance of the amount chargeable for such gas by Seller shall then be deducted by Buyer from or credited by Buyer upon the bills received by Buyer for gas until such time as Buyer, by reason of such deductions or credits, shall have been fully reimbursed or repaid for the entire cost of drilling such well or wells.

"Said gas well or wells shall then be immediately turned over to Argus Company or to Seller, whichever shall then own the leasehold, and become its property as though it had drilled said well or wells. Gas thereafter shall be taken from said well or wells in the same manner and paid for at the same price and under the same terms and conditions as other gas delivered by Seller to Buyer hereunder.

"In the event that Buyer while drilling such well shall encounter oil it shall stop drilling and immediately notify Argus Company or Seller, as the case may be, of such discovery and Argus Company or Seller, as the case may be, shall within ten days determine in what manner and to what extent such oil sand shall be drilled.

"In the event that any such well so drilled shall prove to be a commercial oil well, Argus Company or Seller, as the case may be, shall have the option to take over such well and reimburse Buyer for the full cost of drilling and equipping same, after which such well shall be the property of Argus Company or Seller, as the case may be, as completely as though it had drilled the same.

"In the event Argus Company or Seller, as the case may be, shall elect not to take such well, Argus Company and Seller shall assign to Buyer all oil rights in the ten acres immediately surrounding the well, and should [fol. 537] Buyer not operate such well as an oil well but deepen such well to a gas sand which shall develop into a commercial gas well, then Buyer shall operate such well in the same manner as though it were originally completed as a gas well and account for the gas therefrom in the manner above set out.

"Dry holes shall be plugged by Buyer under the supervision of Argus Company or Seller, as the case may be, in accordance with the laws of the State of Kansas or Oklahoma, as the case may be.

"If Buyer shall drill a dry hole or holes under the provisions of this Article, the cost thereof shall be paid for out of gas produced, if any, from any producing well drilled by Buyer under this Section. If Buyer shall drill any well or wells under the provisions of this Article, it shall protect and save harmless Argus Company and Seller, and each of them, from any and all damages and/or claims for damages arising out of drilling of such well or wells.

"Buyer agrees to carry liability and workmen's Compensation Insurance in a sum to be agreed upon in favor of Argus Company and/or Seller during any such drilling by Buyer.

"Although in and by this Article III the right is conferred upon Buyer under the conditions in this article stated, to enter upon lands and leaseholds of Argus Company and/or Seller, and to drill for gas thereon, Buyer shall be under no obligation so to do, and the granting of such right shall not be deemed to preclude Buyer from pursuing any other remedy or remedies which may in such event be available to it."

[fol. 538] C

Section VIII of the original contract shall be and hereby is amended so as hereafter to read as follows:

"VIII

"The price which Buyer shall pay to Seller for gas delivered hereunder to and including December 31, 1932, shall be seven and one-half (7½) cents per thousand cubic feet.

"Commencing January 1, 1933 and thereafter the price which Buyer shall pay to Seller for gas delivered hereunder for a period of fifteen (15) years ending January 1, 1948, shall be six (6) cents per thousand cubic feet.

"Not less than one year before the expiration of said fifteen (15) year period ending January 1, 1948, Seller and Buyer shall undertake to agree upon the price to be

paid by Buyer for gas to be delivered hereunder after January 1, 1948, which price shall be not less than six (6) cents nor more than ten (10) cents per thousand cubic feet. The price so to be agreed upon shall be for a period of three (3) years from and after the expiration of said period of fifteen years. In event that Seller and Buyer shall not on or before eight (8) months prior to the expiration of said fifteen year period have reached an agreement as to such price, then the same shall be determined by arbitrators in the manner hereinafter provided.

"Not less than six (6) months before the expiration of each three year period after January 1, 1948 for which the price shall have been so determined by agreement or arbitration, Seller and Buyer shall endeavor to agree upon the price to be paid by Buyer for gas to be delivered hereunder during the next succeeding [fol. 539] three year period, and in event of their failure within sixty (60) days from the commencement of such six months period to agree, the determination of such price shall be by arbitration as hereinafter provided.

"In event of arbitration as hereinbefore provided, one arbitrator shall be chosen by Seller, another by Buyer and the two arbitrators so selected shall choose a third. The arbitrators so chosen shall constitute a board of arbitration, and the decision of the majority of said board shall be final, provided that in no event shall the price fixed by the board be less than six (6) cents nor more than ten (10) cents per thousand cubic feet. The authority of the arbitrators shall in each case be limited to fixing a price for a period of three years next ensuing the then current period.

"If either Seller or Buyer in accordance with the foregoing provisions, shall request arbitration and select an arbitrator, the other shall appoint its arbitrator within fifteen days after notice of such selection, and if it fails so to do, the arbitrator selected by the party requesting arbitration shall have the right to decide the question of price. If Seller and Buyer each shall have selected an arbitrator, and such arbitrators do not within twenty days after their selection agree upon and appoint a third arbitrator, the judge of the District Court of the United States in which the delivery point

under this agreement shall then be located shall be requested either to act as an arbitrator or to select a third arbitrator.

"If after the constitution of a board of arbitrators in any case as above provided, said board shall fail, within a period of forty days thereafter, to reach a decision, said board shall be discharged and a new board shall be created in like manner as if no board had previously been chosen.

[fol. 540] "Each party shall pay the arbitrator of its own selection, and both parties, share and share alike, shall pay the third arbitrator.

"It is expressly stipulated that delivery of gas by Seller under this agreement shall not be suspended because of delay in determination of the price applicable to delivery of gas for any period, but that delivery shall continue at the last previously effective price, and upon determination of the price for the period for which the price is under consideration, the same shall be applied retroactively to gas previously delivered during such period."

D

Article X of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

"X

"Seller shall render to Buyer on or before the tenth day of each calendar month a statement of the amount of gas delivered hereunder by Seller during the preceding calendar month and shall accompany said statement with supporting meter charts which charts shall be returned to Seller after examination. Buyer agrees to make payment on or before the twenty-fifth day of each month for all gas delivered hereunder during the preceding month. If in any calendar year during the term of this agreement Buyer shall fail to take the minimum amount of gas which it is required hereunder to purchase during such year, then within twenty-five days after the end of such year Buyer shall pay Seller (at the price in effect hereunder for gas delivered to Buyer hereunder during such year) for the difference [fol. 541] between the minimum amount of gas which

Buyer is required to purchase hereunder during such year and the amount of gas which Buyer shall have taken hereunder during such year. Should Buyer fail to pay any amount due to Seller when due, unless in good faith contested, interest thereon shall accrue at the rate of six per centum (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay, unless in good faith contested, continues for sixty (60) days, Seller may suspend deliveries of gas hereunder, but the exercise of such rights shall be in addition to any and all other remedies available to Seller."

"Argus Company has outstanding $850,000. principal amount of its First Mortgage Seven Per Cent. (7%) Gold Notes secured by its Deed of Trust, dated August 1, 1930, to The Wheeler Kelly Hagny Trust Company, as Trustee, all of which notes are owned by a shareholder of Buyer. For the purpose of paying, refunding and discharging its indebtedness and for other purposes, Argus Company desires to create an issue of First Mortgage Gold Bonds not exceeding initially $2,000,000. in aggregate principal amount (of which $163,000. will be classed as First Mortgage Ten Year 7% Sinking Fund Gold Bonds, Series A and $1,837,000. will be classed as First Mortgage Ten Year 7% Sinking Fund Gold Bonds, Series B), and to pay, refund and discharge all said notes and unpaid and accrued interest thereon, and to cause said Deed of Trust, dated August 1, 1930, to be released of record.

"Buyer hereby agrees to cause the holder of said outstanding notes, aggregating $850,000. principal amount, to accept in exchange therefor, a like amount, par for par, of said proposed First Mortgage Ten Year 7% Sinking Fund Gold Bonds, Series B.

[fol. 542] "The proposed new mortgage to secure said proposed bonds shall provide for a sinking fund for the benefit and to be applied to retirement of the principal of Series A Bonds equal to one cent (1c) per thousand cubic feet of all gas sold and delivered by Argus Company subsequent to April 1, 1932, and shall provide also for a sinking fund for the benefit and to be applied to the retirement of the principal of said Series B bonds equal to an additional one cent (1c) per thousand cubic feet of all gas sold and delivered by Argus Company

subsequent to April 1, 1932. Said proposed mortgage further will provide that if any sinking fund established for any bonds in excess of the $2,000,000 principal amount comprising Series A and Series B bonds and initially issuable under said mortgage shall be upon a basis more favorable to the holders of such additional bonds than the sinking fund provided for said Series B bonds, then the sinking fund for said Series B bonds shall be modified so that the rate of retirement of said Series B bonds shall be increased to conform to the rate of retirement which may be provided by any sinking fund established for such additional bonds.

"Argus Company in and by said proposed mortgage shall covenant and agree to cause payment to be made to said respective sinking funds for said bonds of Series A and Series B in accordance with the foregoing provisions. Said mortgage shall provide that commencing with the month of August, 1932, said payments shall be made, monthly on or before the last day of each month, based upon gas sold and delivered during the preceding calendar month.

"It is expressly agreed by the parties hereto that upon all bills for gas sold by Seller to Buyer under this agreement and/or paid for under any of the minimum provisions of this agreement Buyer shall be en- [fol. 543] titled to and shall receive credit for two cents (2c) for each and every one thousand cubic feet of gas so sold and covered by each and every such bill. Buyer agrees to pay over and deliver to the trustee or trustees under said new mortgage, the amounts so credited to and retained by Buyer, one-half of the amounts so paid over to be credited to said sinking fund for the Series A bonds and one-half of the amount so paid over to be credited to the sinking fund for said Series B bonds. Such payment by Buyer to said trustee or trustees shall be made on or before the 25th day of each calendar month, (commencing with the month of August, 1932) in respect of gas delivered during the next preceding calendar month, and shall, for the purposes of said mortgage, be held to constitute payment by Argus Company of the sums required to be paid by it to said sinking funds upon or in respect of gas sold by it to Seller and by Seller resold to Buyer under this agreement.

"After all of the Series A bonds, with all interest thereon, shall have been paid, discharged and cancelled, or funds sufficient for the payment or redemption thereof shall be delivered to said trustee or trustees, the amount which Buyer shall be entitled to and shall receive credit for upon all bills for gas sold by Seller to Buyer under this agreement shall be reduced to one cent (1c) per one thousand cubic feet of gas so sold, and the amount so credited to and retained by Buyer shall be paid over by Buyer to said trustee or trustees for the sinking fund for the Series B bonds so long as Buyer shall continue to purchase gas under this agreement and the Series B bonds shall be outstanding. Upon the payment, discharge and cancellation of all of the Series B bonds, or upon the deposit with said trustee or trustees of funds sufficient for the payment or redemption thereof, Buyer shall cease to be en- [fol. 544] titled to and to receive credit for one cent (1c) upon each and every thousand cubic feet of gas purchased from Seller by Buyer under this agreement.

"In case of any increase in the rate of retirement of the Series B bonds under the foregoing provisions of this section, the amount which Buyer at the time shall be entitled to retain and to receive credit for upon all bills for gas sold by Seller to Buyer under this agreement as hereinbefore provided shall be increased to such extent as necessary to reflect such increased retirement rate, and such increased amount shall be paid over by Buyer to said trustee or trustees under said new mortgage for credit to the sinking fund for said series B bonds.

It is expressly understood and agreed that Buyer shall retain said amounts of two cents (2¢) or one cent (1¢) (as the case may be) for each and every thousand cubic feet of gas in respect of which the Buyer shall have been required to make payment under the minimum provisions hereof, and shall pay over the amounts so retained to said trustee or trustees, as aforesaid.

E

Section XI of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

"XI

"The gas contracted to be sold by Seller hereunder is gas which shall be purchased or acquired by Seller by good title directly from Argus Company and which gas shall have been produced or acquired by Argus Company by good title from lands and/or leases now owned or hereafter acquired by Argus Company in [fol. 545] Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, and counties in Kansas or Oklahoma immediately adjoining said Stevens and Morton Counties, Kansas, and Texas County, Oklahoma, (said four counties named and counties in Kansas and Oklahoma immediately adjoining said Stevens County and/or Morton County, Kansas, or said Texas County, Oklahoma, for the purposes of this agreement being known as the "Hugoton Area", anything in the Original Contract or in this agreement to the contrary notwithstanding), and/or from Gas Purchase Contracts now owned or hereafter acquired by good title by Argus Company covering acreage in said Hugoton Area. Buyer shall not be required to take any gas other than purchased or acquired by Seller from Argus Company as aforesaid after having been produced and/or acquired by Argus Company as aforesaid.

"Seller and Argus Company each hereby agrees with Buyer that Argus Company now owns (or upon the acquisition from Western Production Company, a Delaware corporation, of gas lands and leases owned by the latter, which acquisition Argus Company agrees presently to effect, Argus Company will own) not less than one hundred thousand (100,000) acres of gas lands and gas leases in Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, as set forth with reasonable particularity of description and identification in the schedule designated "Exhibit 2" hereto annexed and constituted a part of this agreement. Seller and Argus Company each further hereby agrees with Buyer that Argus Company will at all times maintain as a reasonable reserve for the purposes of this agree-

ment, out of said 100,000 acres scheduled in Exhibit 2 (and other acreage hereafter acquired by Argus Company acceptable to Buyer), not less than fifty thousand (50,000) acres acceptable to and approved by Buyer, to be owned and held by Argus Company by good title [fol. 546] (as hereinafter defined and provided), situated in said Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, and distributed as between said counties acceptable to Buyer. If Argus Company shall so elect, Buyer agrees that Argus Company may acquire and own additional reserves of gas acreage in counties in Kansas and Oklahoma immediately adjoining said Stevens County or Morton County, Kansas, or said Texas County, Oklahoma, from which gas sold and delivered by Seller under this agreement may be produced by Argus Company and thereafter acquired by Seller from Argus Company. The minimum of 50,000 acres acceptable to Buyer constituting a constant minimum reasonable gas reserve to be maintained as aforesaid in said Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, shall include adequate acreage held by good title, in extent and otherwise acceptable to Buyer, supporting, or subject to drainage by, the producing, or commercially productive wells of Argus Company, whether or not on the date of the actual execution of this agreement such wells shall be connected with Seller's gathering system.

"Seller and Argus Company each agrees that Argus Company at all times will properly protect, conserve and maintain said minimum reserve including said supporting acreage.

"If it shall appear at any time that any gas acreage in the Hugoton Area as defined in this Article, not then constituting a part of said minimum gas reserve of Argus Company shall be more promising than a corresponding extent of acreage then a part of such minimum reserve, and if such more promising acreage shall then be owned or shall be acquired by Argus Company by good title, Argus Company shall have the right, with the approval of Buyer, to substitute such apparently [fol. 547] superior acreage for said acreage theretofore comprising a portion of said minimum gas reserve. Seller and Argus Company each agrees thereafter such substituted acreage shall be protected, conserved and

maintained by Argus Company in like manner as acreage constituting a part of said minimum reserve as theretofore constituted.

"Seller and Argus Company each agrees that Argus Company has caused, or forthwith will cause, the titles to a sufficient portion of said acreage scheduled in Exhibit 2, to be examined by competent counsel so that it may be determined that a minimum of 50,000 acres acceptable to Buyer shall be owned and held by Argus Company by good and merchantable title, free of all liens and encumbrances with the Exception (1) the lien of current taxes not in default, and (2) any easement or rights of way on real estate which shall not substantially impair or interfere with the use and enjoyment of such property by Argus Company, and (3) the lien of any existing mortgage created upon the fee prior to the execution and delivery of the gas lease owned and held by Argus Company, and that such lien and/or the indebtedness thereby secured shall not have been assumed by the lessee and shall be of such nature that the lessee does not customarily or by implication pay or assume any obligation to discharge the interest charges.

"It is understood that Argus Company purposes to acquire by good title from Western Production Company gas acreage and/or gas leases owned by the last named Company, and that certain or all of such gas acreage and/or leases will be included in those examined by counsel in behalf of Argus Company as aforesaid.

"Argus Company further agrees that it will as to any of such titles as to which it may be in doubt, consult with representatives of Buyer, and that upon request by [fol. 548] Buyer at any time it will consult Buyer as to the sufficiency or acceptability of any title. If in any case it shall appear in the judgment of Buyer that any encumbrance within the definition aforesaid shall be disproportionately large when compared with the value of the fee encumbered, before or without reference to any enhancement in such value by the drilling of a well or wells thereon, Seller will exclude the acreage and/or lease subject to such encumbrance, even though otherwise acceptable to buyer, from said minimum reserve of 50,000 acres, and will substitute therefor other acreage of like extent and value acceptable to Buyer and the

title to which is owned by Argus Company, free from liens except the liens and encumbrances of the character first hereinbefore described.

"Seller and Argus Company further each agrees that a reasonable time before the commencement of drilling of any well or wells upon any acreage and/or gas leases at the time owned by Argus Company in said Hugoton Area, Seller and Argus Company will cause the title to be examined, and that such title shall be approved by Buyer before Argus Company shall institute such drilling.

"If in case of any acreage and/or gas lease subject to mortgage as aforesaid, the same shall be lost through foreclosure, Seller and Argus Company each agrees that Argus Company forthwith will replace such acreage and/or lease so lost with other acreage in the Hugoton Area satisfactory in all respects to Buyer and owned by good and merchantable title by Argus Company free from liens and encumbrances except as hereinbefore provided.

"If in the case of any acreage and/or lease so encumbered as to be unacceptable to Buyer as hereinbefore stated, or if in the case of any acreage or lease lost through foreclosure, a well or wells shall have been [fol. 549] located upon such acreage and/or lease, Seller and Argus Company each agrees that the acreage and/or lease substituted in such case as hereinbefore required shall be acreage upon which a well or wells of equivalent open flow and value shall be located, and that goods and merchantable title to such well or wells shall be owned by Argus Company, free of encumbrances except as hereinbefore provided.

"Seller and Argus Company each agrees that Argus Company from time to time upon request of Buyer will furnish Buyer with title papers, reports and opinions with reference to its gas acreage, wells, leases and properties in the Hugoton Area, and with statements in such reasonable detail as Buyer may desire showing the status of said minimum gas reserve of 50,000 acres acceptable to Buyer at the time owned and held by Argus Company, including descriptions and other particulars, with reference to acreage, wells and/or leases owned, duration of leases, compliance with the terms and obligations thereof, payment of delay rentals, payment of

taxes and any other particulars necessary to determine the validity of the title of Argus Company to such acreage and/or leases.

"Said minimum reserve of not less than 50,000 acres acceptable to Buyer shall be charged with fulfillment by Seller of its obligations under this agreement and dedicated to the supply, by Seller, of natural gas hereunder and shall not be mortgaged or otherwise encumbered or suffered to be subjected to any liens (other than the liens of taxes not in default, of easements or rights of way, as aforesaid, and of mortgages upon the fee prior to the making of gas lease, within the definition and limitations hereinabove set forth, and other than the lien of the proposed new mortgage of Argus Company hereinbefore mentioned), except upon and with the consent and approval in writing of Buyer.

[fol. 550] "Gas sold and delivered by Seller to Buyer under this agreement may be gas produced from any acreage in the Hugoton Area as hereinbefore defined, whether or not such acreage be owned by Argus Company, if and provided, however, that such gas so produced shall first have been acquired by good title by Argus Company and thereupon shall have been purchased or acquired by good title by Seller from Argus Company; it being an essential stipulation and condition of this agreement that all gas sold and delivered by Seller to Buyer shall be gas which shall have been produced within the confines of said counties constituting said Hugoton Area and acquired by good title by Seller from Argus Company.

"Seller and Argus Company each hereby agrees with buyer that the Gas Purchase Contract now in effect between Seller and Argus Company, as from time to time amended, shall at all times be maintained in full force and effect so as to assure to Seller an adequate supply of gas wherewith to fulfill the obligations of Seller to Buyer under this agreement.

"If Argus Company shall permit said minimum gas reserve of not less than 50,000 acres to be diminished at any time below 50,000 acres, or if Seller or Argus Company shall default in any other of their respective agreements and covenants in this Section XI contained, and if such minimum reserve shall not be restored acceptably to Buyer or such other defaults remedied

within thirty (30) days after written notice by Buyer to Argus Company and Seller, then Buyer at its election may cancel this agreement, without prejudice to its other rights and remedies for such breach, but such right of cancellation shall be cumulative to all other remedies available to Buyer at law or in equity."

[fol. 551] F

Article XII of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

"XII

"The gas delivered hereunder shall be what is known as 'sweet' gas and shall be natural gas as produced in its natural state from the wells. Seller is to tender delivery to Buyer only of natural gas which is of merchantable quality, free from dirt, oil, water or other foreign substances.

"In case Buyer shall elect to extract or remove gasoline from natural gas delivered to it by Seller hereunder, Buyer agrees to pay to Argus Company one-eighth of the net proceeds derived by Buyer from the sale of such gasoline after deducting all costs of stripping and marketing, including in such costs reasonable depreciation and all other overhead charges, exclusive of interest.

"Such one-eighth of said net proceeds shall be applicable to payment of the principal of the bonds of said Series B and so long as any of said bonds of Series B shall remain outstanding, Buyer may retain such one-eighth and shall pay over the same to the trustee or trustees under said new mortgage for additional credit to the sinking fund for said series B bonds, Seller and Argus Company hereby expressly authorizing such retention by Buyer and such payment over to such trustee or trustees.

"Seller and Argus Company each agrees to hold Buyer harmless from any loss, damage or expense arising from any claim made to such one-eighth of said net proceeds.

[fol. 552] "Nothing herein contained shall be construed to require Buyer to extract or remove gasoline from the natural gas delivered to it hereunder."

G

Article XIII of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

"XIII

"The gas deliverable hereunder shall be delivered by Seller to Buyer through Seller's said gathering system at the highest pressure which can be efficiently maintained by the natural pressure of gas from the wells connected to Seller's said gathering system, provided, however, that such gas shall never be delivered at a pressure of less than 100 pounds to the square inch; provided, further, that whenever the weighted average field pressure of the wells from which gas is at the time being delivered hereunder shall fall to 150 pounds or less, said required delivery pressure may be reduced from 100 pounds to not less than 50 pounds per square inch. Said gathering system shall at all times be maintained and extensions thereof shall be so designed and maintained as to deliver gas to Buyer through pipe lines of ample size to conform to good practice so that the pressure drops through said lines from wells to point of delivery to Buyer shall be as small as practicable."

H

Article XIV of the original Contract shall be and hereby is amended so as henceforth to read as follows:

[fol. 553] "XIV

"The obligations of Seller hereunder are subject to the reservation of sufficient gas for each of the following purposes:

(*a*) Drilling operations of Argus Company in the Hugoton Area for gas for resale by Seller under this agreement;

(*b*) To perform the obligations of Argus Company or Seller for delivery of gas to the lessors under the terms of the leases covering lands referred to in Section XI hereof.

"Neither Argus Company nor Seller has any existing contract for the sale of gas from said Hugoton Area

which is or will be entitled in any manner to priority over the rights of Buyer, as herein set forth, to receive from Seller gas produced or purchased by Argus Company in said Hugoton Area, and neither Argus Company nor Seller shall subsequently to the date of this agreement sell (other than to Buyer), or contract to sell, any gas produced or purchased by Argus Company or produced or purchased by or for Seller in said Hugoton Area unless Seller shall then and thereafter have an excess of gas from wells connected to its said gathering system and owned by or subject to contract to Argus Company over and above the quantity required to maintain an open flow equal to at least ten times the daily requirements of Buyer from time to time under this agreement."

I

Article XVII of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

[fol. 554] "XVII

"As to all gas produced by Argus Company and delivered and to be delivered to Buyer hereunder by Seller, Argus Company and Seller warrant title thereto and the right to sell the same and that such gas shall be clear and free from all liens and adverse claims, and as to all gas not produced by Argus Company but purchased by it in the Hugoton Area and delivered or to be delivered to Buyer hereunder by Seller, Argus Company and Seller warrant title thereto and the right to sell the same and that such gas shall be clear and free from all liens and adverse claims. In case of any adverse claim respecting any of said gas, Buyer may retain the purchase price thereof without interest until such claim has been finally determined, or until Seller shall have furnished Buyer bond, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer. Argus Company and Seller each agree, if notified thereof by Buyer, to indemnify Buyer against payment of any tax now or hereafter imposed by any governmental authority upon the production of said gas, or the operation of wells or gas properties. Buyer shall pay all taxes imposed by lawful govern-

mental authority upon the sale and/or distribution by Buyer of said gas."

J

Article XVIII of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

"XVIII

"Argus Company agrees to cause due diligence to be exercised in the operation of its gas wells connected to Seller's gathering system. Seller agrees to keep its gathering system in good repair and to operate the [fol. 555] same, and to cause the gas wells of Argus Company to be operated, in a skillful and approved manner.

"Argus Company and Seller each further agrees that the gas wells, gas acreage and gas leases of Argus Company and the gathering system of Seller, as from time to time constructed, extended and enlarged, and all appurtenances thereto, shall be and hereby are dedicated to the fulfillment of this agreement and that neither said wells, acreage and leases, nor said gathering system and appurtenances, nor any thereof, shall be encumbered, leased or otherwise disposed of except as hereinbefore and hereinafter expressly provided, unless with the consent in writing of Buyer. It is expressly provided, however, that said wells, acreage, leases, gathering system, gas properties and appurtenances (including this agreement) may, subject to the provisions of this agreement, be sold, together and as an entirety, to a responsible purchaser upon such purchaser assuming, and, if so requested by Buyer, by suitable supplemental indenture covenanting and agreeing, to carry out and perform each and all of the agreements, undertakings and obligations of Seller and Argus Company in and under this agreement, and further covenanting and agreeing that said property so acquired shall be charged with the fulfillment of this contract. It is further agreed that the gathering system and other properties of Seller are to be subject to the lien of a proposed new Indenture of Mortgage to be executed by Seller, dated as of March 1, 1932, under which there will be initially outstanding $650,000 principal amount of First Mortgage 7% Sinking Fund Gold Bonds Series A of Seller.

"Nothing in this section contained shall be construed to preclude Seller and/or Argus Company from selling or otherwise, disposing of any worn out, obsolete or disused equipment, apparatus or items of personal prop-
[fol. 556] erty no longer used or useful for the purposes of Seller or Argus Company, if it shall appear from a certificate of a competent Engineer, approved by Buyer, that such equipment, appurtenances or items of personal property are no longer used or useful for the purposes of Argus Company or Seller, and that the sale or other disposition thereof is for the best interests of Argus Company and/or Seller, and that other similar property of not less than equal value, acquired by good title by Argus Company or Seller, as the case may be, shall have been substituted therefor.

"Argus Company also shall have the right to abandon any gas well, acreage or gas lease which in the judgment of its Board of Directors shall no longer be required for the purposes of the Company, and the retention of which shall be inadvisable from the standpoint of the Company, if and provided that a certificate of a competent Engineer acceptable to Buyer shall first have been obtained certifying as to the facts upon the basis of which such abandonment is authorized; provided further, however, that in the case of any such abandonment Argus Company shall forthwith replace such abandoned well, acreage and/or gas lease with another well, acreage and/or gas lease in the Hagoton Area of not less open flow, extent and value than the well, acreage and/or gas lease abandoned; such substituted well, acreage and/or lease being in all respects acceptable to Buyer and being held by Argus Company by title likewise approved by Buyer.

"Nothing herein contained shall be construed to restrict in any manner the right of Argus Company to sell or abandon (without the approval or consent of Buyer) any gas acreage and/or leases at any time owned by it, not constituting a part of said minimum reserve of fifty thousand (50,000) acres."

[fol. 557] K

Article XXI of the Original Contract shall be and hereby is amended so as henceforth to read as follows:

"XXI

"This agreement shall bind and inure to the benefit of the successors and assigns of the respective parties hereto and shall be assignable by Argus Company and Seller only if Argus Company and Seller shall sell and convey, together and as an entirety, their properties as permitted under the provisions of Section XVIII hereof and in such event only in conjunction with and as a part of such sale and conveyance, and to said responsible purchaser.

"This agreement may also be assigned by Argus Company and/or Seller with the consent in writing of Buyer, and the giving of such consent shall rest solely in the sound discretion of Buyer.

"No assignment or transfer of this agreement shall in any case operate or be construed to release Argus Company and Seller, or either of them, from their several agreements, undertakings and obligations in this agreement contained, or arising under or by virtue hereof."

Except as and to the extent amended and supplemented by the provisions of this amendatory and supplemental agreement, the Original Contract dated May 27, 1930 shall continue in force and effect.

The words "Article" and "Section" are used interchangeably and synonymously throughout this agreement.

This agreement may be executed in several counterparts, and all such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

[fol. 558] L.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective officers, thereunto duly authorized, and their corporate seals to be hereunto affixed, as of the day and year first above written.

Missouri Valley Gas Company, By Henry M. Brown, Vice-President. (Seal.)

Attest: A. G. Lindquist, Assistant Secretary.

The Argus Production Company, By Warren J. Dale, President. (Seal.)

Attest: A. G. Lindquist, Assistant Secretary.

Northern Gas and Pipe Line Company, (Formerly Missouri Valley Pipe Line Company) By H. L. Hanley, Vice-President. (Seal.)

Attest: D. H. Holmes, Assistant Secretary.

[fol. 559] STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, That on this 9th day of August, A. D. 1932, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Warren J. Dale, Vice-President of The Argus Production Company, a corporation, and A. G. Lindquist, Assistant Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year last above written.

Ellen D. Young, Notary Public. (Seal.)

My commission expires Nov. 25, 1935.

[fol. 560] STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, That on this 9th day of August A. D. 1932, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Henry M. Brown, Vice-President of Missouri Valley Gas Company, a corporation, and A. G. Lindquist, Assistant Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such

persons duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year last above written.

Ellen D. Young, Notary Public. (Seal.)

My commission expires Nov. 25, 1935.

[fol. 561] STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, That on this 12th day of August, A. D. 1932, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came H. L. Hanley, Vice-President of Northern Gas and Pipe Line Company, a corporation, and D. H. Holmes, Assistant Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year last above written.

Arma M. Sivley, Notary Public. (Seal.)

My commission expires Sept. 18, 1932.

[fol. 562] Guaranty

Whereas, at the request of the Republic Gas Corporation, a Delaware corporation, Northern Gas and Pipe Line Company, a Delaware corporation (formerly known as Missouri Valley Pipe Line Company), has entered into the within and foregoing agreement in writing, dated as of the first day of July, 1932, with Missouri Valley Gas Company, a Delaware corporation, and The Argus Production Company, a Delaware corporation, amendatory and supplemental of Gas Purchase Contract, dated May 27, 1930, between said Missouri Valley Gas Company, The Argus Production Company and Northern Gas and Pipe Line Company;

Now, therefore, in consideration of the premises and of other good and valuable consideration to Republic Gas Corporation paid by said Northern Gas and Pipe Line Company, the receipt whereof is hereby acknowledged, said Republic Gas Corporation hereby guarantees to said Northern Gas and Pipe Line Company, its successors and assigns, the due and punctual performance by said Missouri Valley Gas Company and said The Argus Production Company of each and all of their respective agreements, covenants and undertakings contained in said Gas Purchase Contract, dated May 27, 1930, as amended by said amendatory and supplemental agreement.

In witness whereof said Republic Gas Corporation has caused these presents to be duly executed in its corporate name and behalf, and its corporate seal to be hereto affixed and attested by its proper officers thereunto duly authorized by its Board of Directors, this 9th day of August, 1932.

Republic Gas Corporation, By Henry M. Brown, Vice-President. (Seal.)

Attest: Warren J. Dale, Assistant Secretary.

[fol. 563] Recording Data

STATE OF KANSAS,
Grant County, ss:

This instrument was filed for record on the 15 day of Aug. A. D. 1932, at 3:00 o'clock P. M., and duly recorded in Book 7 of at page 121.

Jewel Rowland, Register of Deeds. (Seal.)

STATE OF KANSAS,
County of Stevens, ss:

This instrument was filed for record on the 15 day of Aug. A. D. 1932 at 9:35 o'clock A. M., and duly recorded in Book Misc. K, at page 299. Fee, $57.26.

E. H. Thompson, Register of Deeds. (Seal.)

STATE OF KANSAS,
Morton County, ss:

This instrument was filed for Record on the 15 day of Aug. A. D. 1932 at 2 o'clock P. M. and duly recorded in Book K of Misc. at page 167 to 186. Fee $22.95 Pd.

J. E. Carpenter, Reg. of Deeds. (Seal.)

STATE OF OKLAHOMA,
County of Texas, ss:

This Instrument was filed for Record on Aug 15 1932 at 11 o'clock A. M. and duly Recorded in Book 188 of ..... Page 1 to 15. Fee $22.95.

Anna Lee Williamson, County Clerk. (Seal.)

[fol. 564] Amendatory and Supplemental Agreement

Northern Natural Gas Company and Missouri Valley Gas Corporation

Dated April 5, 1937

[fol. 565] This indenture dated as of this 5th day of April, 1937, made and entered into by and between Northern Natural Gas Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, as party of the first part, and Missouri Valley Gas Corporation, a corporation duly organized and existing under the laws of the State of Delaware, as party of the second part, Witnesseth:

Whereas, on the 27th day of May, 1930, a certain Gas Purchase Contract was entered into by and between Missouri Valley Gas Company, a Delaware corporation, as party of the first part, and therein referred to as "Seller"; The Argus Production Company, a Delaware corporation, as party of the second part, and therein referred to as "Argus Company"; and Missouri Valley Pipe Line Company, a Delaware corporation, as party of the third part, and therein referred to as "Buyer"; which Gas Purchase Contract is by reference made a part hereof; and

Whereas, on the first day of July, 1932, a certain Amendatory and Supplemental Agreement, amending and supplementing said Gas Purchase Contract dated May 27, 1930,

was entered into by and between said Missouri Valley Gas Company, a Delaware corporation, party of the first part and therein referred to as "Seller"; Argus Production Company, a Delaware corporation, party of the second part, therein referred to as "Argus Company", and Northern Gas and Pipe Line Company (as successor in interest to Missouri Valley Pipe Line Company), a Delaware corporation, party of the third part, and therein referred to as "Buyer", which said Amendatory and Supplemental Agreement is by reference made a part hereof; and

Whereas, by successive transfers, assignments, and other corporate changes, all of the rights, title and interest of "Seller" in and by virtue of said Gas Purchase Contract of May 27, 1930, and said Amendatory and Supplemental [fol. 566] Agreement of July 1, 1932, have become, and are now, vested in Missouri Valley Gas Corporation, party of the first part hereto; and

Whereas, by successive transfers, assignments, mergers and other corporate changes, all of the rights, title and interest of the "Buyer" in, to and by virtue of said Gas Purchase Contract of May 27, 1930, and the Amendatory and Supplemental Agreement thereto dated July 1, 1932, have become, and are now, vested in Northern Natural Gas Company, party of the second part hereto; and

Whereas, by the terms of Article XI of said Original Gas Purchase Contract of May 27, 1930, as amended and supplemented by said Amendatory and Supplemental Agreement of July 1, 1932, "Seller" and "Argus Company" agreed and represented that said companies owned not less than one hundred thousand (100,000) acres of gas lands and gas leases in Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, a schedule of which gas lands and gas acreage is set forth and particularly described and identified in Exhibit "2" which is attached to and made a part of said agreement, and which, by reference, is made a part of this agreement; and

Whereas, by the terms of said Article XI it was agreed and provided that from and of said one hundred thousand (100,000) acres of gas lands and gas leases, described in Exhibit "2", a minimum of fifty thousand (50,000) acres thereof, acceptable to "Buyer", should constitute a constant

and continuing gas reserve to be maintained by "Seller" and "Argus Company" and dedicated to the fulfillment of said Gas Purchase Contract of May 27, 1930, as amended and supplemented by the Amendatory and Supplemental Agreement of July 1, 1932, subject only to the conditions, requirements and limitations set forth in said Gas Purchase Contract as amended, and which by reference is made a part hereof; and

Whereas, since the execution of the Amendatory and Sup- [fol. 567] plemental Agreement of July 1, 1932, (to which said Exhibit "2" is attached), a number of the gas lands and gas leases therein described have been released and surrendered, or otherwise disposed of, with consent of "Buyer", and other and different leases have been substituted for gas leases described in said Exhibit "2"; and

Whereas, the parties hereto desire to amend and supplement the said Original Gas Purchase Contract as amended and supplemented by the Amendatory and Supplemental Agreement of July 1, 1932, to the extent and for the purpose of re-stating said Exhibit "2" and to re-describe and re-identify the gas lands and gas leases which shall hereafter (subject to all of the provisions contained in said Original Gas Purchase Contract, as amended, relating to substitution or other permissible changes) constitute the gas lands and gas leases which shall hereafter constitute and comprise the approved gas lands and gas leases, to be owned and held by "Seller" by good title, and which shall constitute a gas reserve dedicated to the fulfillment of said contract:

Now, therefore, in consideration of the premises and of the agreements and covenants of the respective parties hereto, hereinafter set forth, it is agreed by and between said parties as follows:

1. That the representations of each of the parties, as set forth in the preamble hereof, are true and correct, and that the same are hereby specifically made a part of this agreement.

2. That the schedule of gas lands and gas leases located in said Stevens, Morton and Grant Counties, Kansas, and Texas County, Oklahoma, containing the lease number, legal description (township, range and county), amount of acreage, and the rental dates thereof, which is hereto attached, marked Exhibit "A", and made a part hereof, correctly

describes the gas lands and gas leases now owned by "Seller" by good title which are hereby dedicated to the fulfillment of said Original Gas Purchase Contract of May 27, 1930, as amended and supplemented as of July 1, 1932.

[fol. 568]. 3. That from and after the date of the execution hereof said gas lands and gas leases set forth in Exhibit "A" hereto attached (covering approximately 64,512 acres) shall (subject to the conditions, restrictions and limitations hereinafter set forth) constitute the reserve provided for by the Original Gas Purchase Contract of May 27, 1930, as now amended, and it is agreed that said leases, the location thereof and the titles thereto, have been approved and accepted by Northern Natural Gas Company and that said schedule of gas lands and gas leases set forth in Exhibit "A" hereto attached is hereby substituted for the gas lands and gas leases set forth and decribed in Exhibit "2" which is attached to and is made a part of the Amendatory and Supplemental Agreement of July 1, 1932, provided, however,

(*a*) That Missouri Valley Gas Corporation shall have the right, without the consent of Northern, to withdraw from said reserve any of the acreage, except acreage held by producing wells which are now or may hereafter be connected with Northern's pipe line system, described in Exhibit "A" hereto attached (and acreage substituted by agreement of parties as provided in the contract), which by the terms hereof is dedicated to the fulfillment of this contract, if, for any reason, in the judgment of its management such withdrawal shall be necessary or desirable, but only upon the following conditions:

(*i*) that the total acreage remaining in the reserve, as described in Exhibit "A" (and acreage substituted by agreement of parties as provided in the contract), after any such withdrawal shall equal or exceed fifty thousand (50,000) acres;

(*ii*) that Missouri Valley Gas Corporation shall give Northern at least thirty (30) days prior notice in writing of its intention to withdraw from the reserve any of the acreage described in Exhibit "A" (and acreage substituted by agreement of parties as provided in the contract), setting forth in said notice a particular description of said acreage (identical with

[fol. 569] the description as contained in Exhibit "A") so that Northern may at all times be accurately advised of the acreage remaining in the reserve both as to description and total.

(*iii*) that at the expiration of the thirty (30) day period covered by the notice provided in Paragraph (*ii*) above Missouri Valley Gas Corporation shall prepare and forward to Northern a written release, in recordable form, to be executed by Northern, accurately describing the acreage to be withdrawn and released from the lien of its dedication to the fulfillment of this contract, which written release shall be immediately executed by Northern and returned to Missouri Valley Gas Corporation and properly recorded by it at its own expense in the County or Counties wherein the acreage therein described is located, and only upon the recordation of such release shall said acreage be considered withdrawn from said reserve.

(*b*) That nothing in the foregoing paragraph (*a*) shall prevent Missouri Valley Gas Corporation from substituting, with the approval and consent of Northern, other more promising acreage, which it may acquire after the execution of this contract for acreage described and set forth in Exhibit "A" (and acreage substituted by agreement of parties as provided in the contract), as permitted and provided in Article XI of the Amendatory and Supplemental Agreement of July 1, 1932, provided, however, that any such after acquired more promising acreage shall, upon substitution, be dedicated to the fulfillment of the gas purchase contract of May 27, 1930, as now amended, in the same manner and to the same extent as that set forth in Exhibit "A" hereto attached.

4. That the gas lands and gas leases described in Exhibit "2", which is attached to and made a part of the Amendatory and Supplemental Agreement of July 1, 1932, except such of said gas leases as are re-described, re-identified and included in Exhibit "A", are hereby released and eliminated from said Gas Purchase Contract.

[fol. 570] 5. That the reserve comprised of the gas lands and gas leases described in Exhibit "A" hereto attached,

shall at all times be subject to all of the terms, conditions, provisions, restrictions and limitations relating the substitution, elimination, or change, of the Original Gas Purchase Contract of May 27, 1930, and the Amendatory and Supplemental Agreement of July 1, 1932, and said reserve shall at all times be maintained by Missouri Valley Gas Corporation out of said gas lands and gas leases described in Exhibit "A", or leases which may be substituted in lieu thereof from time to time with the approval and consent of Northern Natural Gas Company, as provided in said contract.

6. It is specifically agreed that the execution of this Amendatory and Supplemental Agreement is for the sole and only purpose of re-establishing, re-stating and re-dedicating the gas reserve which shall be charged with the fulfillment of the gas purchase contract between the parties hereto as now amended, and making only such changes or modifications in th eOriginal Gas Purchase Contract of May 27, 1930, and the Amendatory and Supplemental Agreement of July 1, 1932, as are necessary to accomplish this purpose, and that in all other respects said Original Gas Purchase Contract of May 27, 1930, and said Amendatory and Supplemental Agreement of July 1, 1932, shall be and remain in full force and effect and continue to be mutually binding upon the parties hereto.

7. This contract shall extend to and be binding upon the trustees, successors and assigns of the parties hereto in the same manner and to the same extent that the Original Gas Purchase Contract of May 27, 1930, and the Supplemental Agreement of July 1, 1932 are binding upon them.

[fol. 571] In witness whereof said Northern Natural Gas Company and Missouri Valley Gas Corporation have each caused this instrument to be signed in its corporate name by its president or one of its vice-presidents, its corporate seal to be hereunto affixed and such seal to be attested by its secretary or one of its assistant secretaries on the day and year first above written.

Northern Natural Gas Company, by F. H. Brooks
(Signed) Its President. (Seal.)

Attest: J. F. Merriam (Signed) Its Assistant Secretary.

Witnesses to the Execution hereof, by Northern Natural Gas Company: R. J. Organ (Signed). Lawrence I. Shaw (Signed).

Missouri Valley Gas Corporation, by Alfred Hurlburt (Signed) Its Vice-President. (Seal.)

Attest: Floyd G. Miller (Signed) Its Asst. Secretary.

Witness to the execution hereof, by Missouri Valley Gas Corporation: Jack L. Bianchi (Signed), Lyman Chatfield (Signed).

[fol. 572] STATE OF NEBRASKA,
County of Douglas, ss:

Be it remembered, that on this 5th day of April, 1937, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came F. H. Brooks, President of Northern Natural Gas Company, a corporation, and J. F. Merriam, Asst. Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year last above written.

George E. Calvin (Signed) Notary Public. (Seal.)

My commission expires October 14, 1942.

[fol. 573] STATE OF TEXAS,
County of Nueces, ss:

Be it remembered, That on this 8th day of April, 1937, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Alfred Hurlburt, Vice-President of Missouri Valley Gas Corporation, a corporation, and Floyd G. Miller, Asst. Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons

duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year last above written.

(Signed) Stella Parker, Notary Public.

My commission expires June 1, 1937. (Seal.)

[fol. 574]

EXHIBIT A

(Substituted for Exhibit "2" referred to in Article XI of the Amendatory and Supplemental Agreement between Missouri Valley Gas Company and Argus Production Company (both now being Missouri Valley Gas Corporation) and Northern Gas and Pipe Line Company (now Northern Natural Gas Company), dated July 1, 1932.)

Acreage Held By Producing Wells

Included in the Minimum Reserve

Lease No.	Name	Description	County	Acreage
1	Greenwood	NE¼ 11-34-38	Stevens	160
7	Davis	SW¼ 31-32-38	Stevens	160
12	Crawford	SE¼ 19-32-37	Stevens	160
14	Porter	SW¼ 27-32-37	Stevens	160
15	Porter	SE¼ 9-2-37	Stevens	160
17	Stone	NE¼ 3-33-39	Stevens	160
19	Paden	SE¼ 19-33-36	Stevens	159
29	Carpenter	NW¼ 29-33-36	Stevens	160
38	Pride	SW¼ 25-33-37	Stevens	160
39	Bunyan	S½ 23-33-37	Stevens	320
42	Asher	N½ 7-35-37	Stevens	318.25
43	Dreibelbis	NW¼ 9-34-39	Morton	160
44	Driebelbis	NE¼ 9-34-39	Morton	160
45	Moorehead	SE¼ 17-32-37	Stevens	160
46	Smith	SW¼ 13-33-37	Stevens	160
64	Hoon	NE¼ 30-32-37	Stevens	160
62	Burrows	SW¼ 31-34-37	Stevens	160
65	Light	SW¼ 18-35-38	Stevens	160
67	Olson	SE¼ 1-32-38	Stevens	160
69	Hershey	NW¼ 26-34-37	Stevens	160
78	Ridpath	E½ of SE¼, W½ of SE¼ 27-34-37	Stevens	160
86	Knier	SW¼ 27-34-37	Stevens	160
92	Erwin	SE¼ 10-35-37	Stevens	160
98	Schaeffer	SE¼ 6-35-38	Stevens	160
113	Jester	Lots 1 & 2 & E½ of NW¼ 7-34-36, Lot 7 & SE¼ of SW¼ 6-34-36	Stevens	234
114	Dixon	SE¼ 18-34-39	Morton	160
115	Mangels	SW¼ 6-34-39	Morton	155.91
117	Armstrong	NW¼ 16-34-39	Morton	160

[fol. 575]

121	Rolla State Bank	NW¼ 8-34-39	Morton	160
124	Thompson	SW¼ 7-34-39	Morton	156
126	Dorth	NE¼ 20-34-39	Morton	160
127	Thompson	NW¼ 18-31-39	Morton	155.95

Lease No.	Name	Description	County	Acreage
129	West	NE¼ 31-34-38	Stevens	160
131	Littell	SE¼ 24-34-40	Morton	160
132	Tillett	SW¼ 21-34-39	Morton	160
134	Sullivan	NW¼ 29-34-39	Morton	160
137	Mangels	NW¼ 4-34-39	Morton	160
139	Gibbons	SE¼ 29-34-37	Stevens	160
141	Sibon	NE¼ 2-34-39	Stevens	160
146	Harrison	SW¼ 30-34-37	Stevens	157.78
153	Parker	Lots 1 & 2 in 7-6-15 NW¼ 18-6-15	Texas	256
154	Ralstin	SW¼ 23-6-14	Texas	160
156	Ratcliff	SE¼ 26-32-38	Stevens	160
162	Sherwood	W½ 33-33-37	Stevens	320
168	Parker	SW¼ 29-34-36, E½ 30-34-36, SW¼ 21-34-36	Stevens	640
191	Hayward	SW¼ 9-34-39	Morton	160
193	Headrick	N½ 9-35-37	Stevens	320
204	Chambers	NW¼ 25-33-40	Morton	160
205	Hayward	NW¼; W½ of NE¼ 31-33-39	Morton	235.60
207	Ratcliff	SE¼ 7-34-38	Stevens	160
208	Forward	NE¼; E½ of SW¼ 5-34-38	Stevens	240
209	Ratcliff	NW¼ 7-34-38	Stevens	160
210	Ratcliff	NE¼ 7-34-38	Stevens	160
213	Armstrong	SE¼ 3-34-39	Stevens	160
215	Armstrong	SW¼ 4-34-39	Morton	160
219	Mangels	NE¼ 20-33-39	Morton	160
220	Ehrhard	NW¼ 28-34-39	Morton	160
225	Ehrhard	S½ of S½ 8-35-39 NW¼ 11-35-39	Stevens	320
227	Hicks	E½; SW¼ 12-34-39 and SE¼ 11-34-39	Stevens	640
268	Mitchell	NW¼ 18-35-37	Stevens	160
270	Johnson	SW¼ 13-35-39	Stevens	160
277*	Morgan	SE¼ 6-33-39	Morton	160
283	Ponder	NE¼ 10-32-38	Stevens	160
284	Ponder	NW¼ 10-32-38	Stevens	160
313	Wiley	NE¼ 1-35-37	Stevens	160
314	Mangels	SE¼ 4-33-39	Morton	160
317	Mangels	SW¼ 19-33-39	Morton	155.45

[fol. 576]

326*	Burton	SE¼ 11-33-40	Morton	160
341	Christopher	NE¼ 10-33-39	Stevens	160
342	Christopher	SW¼ 11-33-39	Stevens	160
345	Roach	NE¼ 34-32-38	Stevens	160
346	Garner	E½ 18-33-39	Morton	320
348	Ratcliff	All of 8-33-37	Stevens	640
349	Wagner	S½ of SE¼ 17-33-38	Stevens	80
351	Barrows	SW¼ 32-34-38	Stevens	160
353	Western Royalty & Devel. Co.	NE¼ 15-34-39	Stevens	160
355	Watson	NE¼ 27-34-40	Morton	160
360	Ellis	NE¼ 12-33-38	Stevens	160
362	Sullivan	NW¼ 34-32-39	Stevens	160
365	Schaeffer	SW¼ 5-33-38	Stevens	160
371	Western Royalty & Dev. Co.	SE¼ 21-32-38	Stevens	160
372	Western Royalty & Dev. Co.	NW¼ 28-32-38	Stevens	160

Lease No.	Name	Description	County	Acreage
377	Western Royalty & Dev. Co.	NE¼ 24-32-38	Stevens	160
378	Western Royalty & Dev. Co.	NE¼ 6-33-36	Stevens	160
384	Webber	NE¼ 9-33-37	Stevens	160
385	Webber	NW¼ 13-32-38	Stevens	160
	Total Acreage Held by Producing Leases			16,383.94

* Completed gas well capable of producing; not connected, held by royalty agreement.

[fol. 577]

Non-Producing Leases to be Held by Delay Rentals

Lease No.	Name	Description	County	Acreage
4	Brollier	SE¼ 7-32-37	Stevens	160
8	Cott	NE¼ 6-32-37	Stevens	160
11	Cott	SW¼ 6-32-37	Stevens	160
13	Moorhead	SE¼ 8-32-37	Stevens	160
16	Speakman	SE¼ 20-32-37	Stevens	160
18	Missouri Valley Gas Corp.—Fee	NW¼ 19-33-36	Stevens	109.23
20	Flower	NW¼ 22-33-36	Stevens	160
30	Paden	SW¼ 19-33-36	Stevens	160
31	Paden	NE¼ 19-33-36	Stevens	160
34	Parsley	SE¼ 30-33-36	Stevens	160
36	Paden	NE¼ 24-33-37	Stevens	160
37	Pride	NE¼ 25-33-37	Stevens	160
47	Smith	SW¼ 14-33-37	Stevens	160
50	Madden	SW¼ 35-32-37 (Less RR R of W)	Stevens	155.72
53	Madden	NE¼ 1-33-37	Stevens	160
55	Madden	SW¼ 1-33-37	Stevens	160
56	Madden	NE¼ 3-33-37 (Less RR R of W)	Stevens	160
58	Madden	NE¼ 11-33-37	Stevens	160
66	Fellers	NE¼ 25-32-38	Stevens	160
68	Thompson	SW¼ 22-33-37	Stevens	160
70	Houston Reed	NW¼ 29-32-37	Stevens	160
71	Martin	SW¼ 7-33-38 NW¼ 17-33-38	Stevens	320
72	Knepper	SW¼ 33-32-38	Stevens	160
76	Danbury	NW¼ 33-32-36	Stevens	160
77	Stoner	NW¼ 4-33-37	Stevens	160
79	Creamer	NE¼ 23-34-37	Stevens	160
80	Creamer	SW¼ 13-34-37	Stevens	160
83	Morford	NW¼ 8-34-36	Stevens	160
85	Morford	SE¼ 8-34-36	Stevens	160
88	Harris	NW¼ 16-34-36	Stevens	160
90	Hagaman	SE¼ 16-34-36	Stevens	160
94	Bevan	W½ 12-34-36	Stevens	320
96	Kansas City Life Ins. Co.	SW¼ 18-34-36; NW¼ 9-34-36; SE¼ 5-34-36	Stevens	476.62
97	Hecht	NW¼ 19-32-37	Stevens	160
99	Newby	SE¼ 28-31-37	Stevens	160
100	Newby	NW¼ 27-31-37	Stevens	160

[fol. 578]

Lease No.	Name	Description	County	Acreag
101	Newby	NE¼ 3-33-36	Stevens	156
102	Newby	NW¼ 34-31-37	Stevens	160
104	Riney	SE¼ 3-32-37	Stevens	160
105	Riney	NW¼ 3-32-37	Stevens	159
107	Riney	NW¼ 11-33-36	Stevens	160
108	Riney	NW¼ 12-33-36	Stevens	160
109	Riney	NW¼ 2-33-36	Stevens	156
112	Broadwell	N½ 30-32-36; NW¼ 29-32-36	Stevens	480
125	Thompson	SW¼ 8-34-39	Morton	160
128	Veech	SW¼ 5-34-39	Morton	160
135	Bunyan	NW¼ 8-33-36	Stevens	160
142	Davis	SE¼ 14-32-38	Stevens	160
149	Lewis	SE¼ & SW¼ 2-34-36	Stevens	320
150	Phillips	W½; SE¼; S½ of NW¼ 14-35-39, S½ NW¼ 15-35-39; S½ 10-35-39	Stevens	1,860
152	Langley	SE¼ 15-6-14	Texas	160
157	Smith	NE¼ 22-33-37	Stevens	160
158	Smith	NE¼ 21-33-37	Stevens	160
161	Lynch	SE¼ 23-34-37; S½ 35-34-37	Stevens	480
165	Parker	All 28-34-36	Stevens	640
166	Parker	S½; W½ of NW¼; SE¼ of NW¼ 32-34-36	Stevens	440
167	Parker	W½ 34-34-36	Stevens	320
169	Parker	SW¼ 19-34-36	Stevens	158
170	Parker	SW¼ 33-34-36; NE¼; NE¼ of NW¼ 32-34-36	Stevens	360
171	Grage	N½ 31-34-36	Stevens	320
172	Vreeland	All 36-31-38	Stevens	640
180	Ratcliff	NW¼ 15-35-37	Stevens	160
183	Ratcliff	SE¼ 15-35-37	Stevens	160
184	Riney	SE¼ 8-32-36 (Less RR R of W)	Stevens	160
188	Brown	NE¼ 11-35-37	Stevens	160
190	Bunton	SE¼ 4-32-36; NE¼ 9-32-36	Stevens	320
192	Headrick	W½ 3-35-37	Stevens	320
197	Cunningham	NW¼ 25-34-37	Stevens	160
198	Hinds	NE¼ 33-6-14	Texas	160
206	Veech	NW¼ 29-33-39	Morton	160
212	Millemon	SW¼ 35-34-40	Morton	160

[fol. 579]

222	Olney	NW¼ 16-32-36	Stevens	160
223	Olney	SE¼ 16-32-36	Stevens	160
226	Earhart	SE¼ 2-34-39	Stevens	160
229	Osmon	NE¼ 18-34-38	Stevens	160
231	Osmon	SW¼ 18-34-38	Stevens	160
234	Fitzgerald	NE¼ 17-35-39	Morton	160
246	Herman W. Hicks	NW¼ 6-34-38	Stevens	155.7
247	O'Connor	NE¼ 26-34-40	Morton	160
248	Ipson	SE¼ 17-33-39	Morton	160
250	Snyder	SE¼ 2-35-40	Morton	160
252	Littell	SE¼ 25-34-40	Morton	160
255	Ipson	SE¼ 30-33-39	Morton	160

Lease No.	Name	Description	County	Acreage
259	Naylor	SW¼ 26-34-40	Morton	160
264	Lewis	NW¼ 9-33-39	Morton	160
265	Lewis	SW¼ 9-33-39	Morton	160
272	Mueller	NE¼ 24-6-14	Texas	160
273	Mueller	SW¼ 24-6-14	Texas	160
274	Gribble	SW¼ 25-6-14	Texas	160
276	Johnson	NW¼ 13-6-14	Texas	160
282	Morgan	NW¼ 8-33-39	Morton	160
292	Bunger	S½ 13-6-15	Texas	320
293	Isham	SW¼ 26-6-15	Texas	160
295	Powell	SE¼ 23-6-15	Texas	160
297	Bunger	SW¼ 18-6-16	Texas	155.37
303	Jackson	Lots 1 and 2, 8-6-15, Lot 2, 9-6-15	Texas	148.53
307	Judd	S½ 24-6-15	Texas	320
308	Judd	NW¼ 25-6-15	Texas	160
309	Judd	NE¼ 24-6-15	Texas	160
310	Skinner	NW¼ 33-6-15	Texas	160
318	Ipson	SE¼ 7-33-39	Morton	160
320	Phillips	SE¼ 18-6-14, Lots 1 & 2, of 8-6-14, Lots 1 & 2 of 7-6-14	Texas	305.60
321	Hodges	NE¼ 32-6-14	Texas	160
322	Sallee	SW¼ 19-6-15	Texas	157.20
366	Reynolds	Lots 1 & 2 and E½ of NW¼ 30-34-38	Stevens	160
379	Western Royalty & Dev. Co.	NE¼ 25-32-37	Stevens	160
383	Western Royalty & Dev. Co.	SE¼ 29-32-39	Morton	160
386	Webber	SE¼ 32-32-36	Stevens	160
469	Rice	NW¼ 31-32-37	Stevens	160
476	Western Royalty & Dev. Co.	NE¼ 11-34-37	Stevens	160
[fol. 580]				
486	Shafer	SE¼ 6-33-38	Stevens	160
491	Elliott	NW¼ 25-34-38	Stevens	160
493	Ewing	SE¼ 20-6-14	Texas	160
494	Ewing	NW¼ 20-6-14	Texas	160
499	Moscow State Bank	SW¼ 10-33-36	Stevens	160
501	Edwards	SE¼ 13-32-37	Stevens	160
503	Winter	NW¼ 3-34-37	Stevens	159
504	Gauss	SW¼ 17-34-37	Stevens	160
507	King	NW¼ 31-33-36	Stevens	160
508	Meiser	SE¼ 10-33-37	Stevens	160
510	Ratcliff	SE¼ 10-32-37	Stevens	160
512	Curl	SW¼ 14-32-37	Stevens	160
513	Hall	SE¼ 22-32-36	Stevens	160
514	Cobb	NE¼ 4-33-36	Stevens	157.36
515	Simmons	NW¼ 4-32-38	Stevens	163.17
523	Moorhead	SE¼ 15-34-37	Stevens	160
527	McNutt	SW¼ 10-34-36	Stevens	158
528	Wilson	SE¼ 11-32-37	Stevens	160
532	Sturgeon	W½ SE¼ 9-33-37	Stevens	76.32
534	Ratcliff	All 15-32-37	Stevens	640
535	Moorhead	W½ 9-32-37	Stevens	320
536	Sutter	NW¼ 27-34-37	Stevens	160
537	Dudley	NW¼ 21-32-38	Stevens	160
538	Moorhead	NE¼ 22-34-37	Stevens	160
539	Asher	NW¼ 12-35-38	Stevens	160

Lease No.	Name	Description	County	Acreage
540	Knier	NE¼ 34-34-37	Stevens	160
541	Parsley	NE¼ 30-33-36	Stevens	160
542	McCalip	NW¼ 10-34-39	Stevens	160
543	McCalip	SE¼ 8-34-39	Morton	160
544	Davis	SE¼ 28-34-37	Stevens	160
545	Adams	NW¼ 17-34-37	Stevens	160
546	Groves	SE¼ 12-32-38	Stevens	160
547	Hjort	N½ 24-34-40	Morton	320
548	Veech	NE¼ 30-33-39	Morton	160
549	Ratcliff	SW¼ 10-35-37	Stevens	160
550	Hershey	NE¼ 27-34-37	Stevens	160
551	Ratcliff	NE¼ 15-35-37	Stevens	160
552	Stoner	SW¼ 4-33-37	Stevens	160
553	Stoner	NW¼ 9-33-37	Stevens	160
554	Joslin	NW¼ 28-32-37	Stevens	160
555	Joslin	N½ 21-32-37	Stevens	320
556	Joslin	NE¼ 29-32-37	Stevens	160
557	Cutter	SE¼ 3-34-37	Stevens	158.4
558	Trueblood	NW¼ 29-34-37	Stevens	160
559	Oliver	NW¼ 10-35-37	Stevens	160
[fol. 581]				
560	Oliver	NE¼ 10-35-37	Stevens	160
561	Walker	SE¼ 11-32-38	Stevens	160
563	McNicol	NW¼ 18-35-38	Stevens	157.62
564	McNicol	NE¼ 18-35-38	Stevens	160
565	McNicol	SE¼ 18-35-38	Stevens	160
566	Burrows	E½ 26-34-38	Stevens	320
567	Burrows	W½ 26-34-38	Stevens	320
568	Elmo Lodge of Perfection	SE¼ 21-34-36	Stevens	160
569	Bowers	NE¼ 9 & S½ NW¼ 10-34-36	Stevens	240
570	Thompson	NE¼ 19-34-39	Morton	160
572	Winter	NE¼ 21-32-38	Stevens	160
573	Elliot	NE¼ 8-32-38	Stevens	160
574	Ralstin	E½ 14 & Lots 1 & 2 11-6-14	Texas	402.78
575	Ralstin	NW¼ 23-6-14	Texas	160
576	Ralstin	SE¼ 23-6-14	Texas	160
577	Ralstin	NE¼ 23-6-14	Texas	160
578	Mueller	SE¼ 24-6-14	Texas	160
579	Ratcliff	SE¼ 34-34-37	Stevens	160
580	Barnett	NE¼ 13-34-37	Stevens	160
581	Barnett	SE¼ 13-34-37	Stevens	160
582	Kreie	NW¼ 34-32-37	Stevens	160
583	Kreie	NE¼ 34-32-37	Stevens	160
584	Kimzey	NW¼ 11-34-37	Stevens	160
585	Hubbard	SW¼ 20-32-37	Stevens	160
586	Willis	SE¼ 33-34-37	Stevens	160
587	Willis	NW¼ 34-34-37	Stevens	160
588	Anderson	NE¼ 36-34-38	Stevens	160
589	Burrows	S½ 27-34-38	Stevens	320
590	Pearce	W½ 26-32-37	Stevens	320
591	Olson	Lots 3 & 4 and E½ SW¼ 31-31-37 (also descr. as SW¼.)	Stevens	151.91
592	Wilmarth	N½ 21-34-36	Stevens	320
593	Mangels	NE¼ 4-33-39	Morton	159.84
594	Hooker	NE¼ 14-32-38	Stevens	160
595	Cutter	NW¼ 10 34-37	Stevens	160
596	Cutter	SE¼ 10-34-37	Stevens	160

Lease No.	Name	Description	County	Acreage
597	Mott	SE¼ 9-34-37	Stevens	160
598	Mott	NW¼ 15-34-37	Stevens	160
599	Joslin	N½ 26-33-37	Stevens	320
600	Farmer	NE¼ 28-32-37	Stevens	160
601	Dreyer	NE¼ 4-33-37	Stevens	160.59
602	Creamer	NW¼ 13-34-37	Stevens	160
[fol. 582]				
603	Hutteh	NE¼ & SW¼ 22-32-37	Stevens	320
604	Moon	NW¼ 25-32-38	Stevens	160
605	Hamilton	E½ 15-35-38	Stevens	318.24
606	Bissitt	NE¼ 5-34-36	Stevens	160.86
607	Moscow St. Bank	SE¼ 24-32-38	Stevens	160
608	Moscow St. Bank	SW¼ 19-32-37	Stevens	153.06
609	Moscow St. Bank	NW¼ 10-33-36	Stevens	160
610	Albert	SE¼ 11-33-37	Stevens	160
611	Albert	NE¼ 14-33-37	Stevens	160
612	Albert	SW¼ 12-33-37	Stevens	160
613	Robinson	N½ 4-32-37	Stevens	319.99
614	Winter	NW¼ 5-35-36	Stevens	160
615	Winter	SW¼ 31-34-36 & NW¼ 6-35-36	Stevens	320
616	Stevens	SW¼ 14-35-37	Stevens	146.84
617	Elliott	NW¼ 17-33-37 & SW¼ 17-33-37	Stevens	313.73
618	Elliott	NE¼ 15 & SW¼ 15-33-37	Stevens	320
619	Ray	SE¼ & Lots 4 & 5 of 18-35-36	Stevens	206.73
620	Swan	SE¼ 19-32-38	Stevens	160
621	Swan	NW¼ 20-32-38	Stevens	160
622	Keller	NW¼ 22-32-37	Stevens	160
623	Bevan	N½ 22-34-36	Stevens	320
624	Conley	SW¼ 22-34-36	Stevens	160
625	Brubaker	NE¼ 27 & SE¼ 22-33-37	Stevens	320
634	Davis	W½ 15-34-36	Stevens	320
636	Bevan	N½ of NW¼ 14 & E½ 15-34-36	Stevens	400
637	Paden	NW¼ 33-33-36	Stevens	160
638	Paden	SW¼ 33-33-36	Stevens	160
640	Gillespie	W½ 2 & NW¼ 11-32-37	Stevens	476.60
641	Gregg	SW¼ 13 & SE¼ 14-34-36	Stevens	320
642	Hogan	NE¼ 12-32-37	Stevens	160
643	Brollier	SW¼ 7-32-37	Stevens	153.33
644	Bevan	SW¼ 27 & NW¼ 24-34-36	Stevens	320
645	Renfrew	SW¼ 15-32-38	Stevens	160
651	Adams	SW¼ 1-32-37	Stevens	160
654	Hall	SW¼ 23; SW¼ 26; NW¼ of SE¼ of 26 & S½ & NE¼ of NE¼ 26-32-36	Stevens	480

[fol. 583]

Lease No.	Name	Description	County	Acreage
655	Gaylord	SE¼ 33-32-36	Stevens	160
656	Bevan	SW¼ 26-34-36	Stevens	160
657	Hayward	NE¼ 5-33-39	Morton	160.16
659	Willis	NE¼ 33-34-37	Stevens	160
661	Shelton	SE¼ 5-33-37	Stevens	160
662	Lynch	NE¼ 26-34-37	Stevens	160
666	Love	SE¼ 18 & NE¼ 19-34-38	Stevens	320
	Total Acreage of Non-Producing Leases Held By Delay Rentals			48,128.67

[fol. 584] Recording Data

Grant County, Kansas

Filed for record at 1:10 o'clock p. m. on May 27, 1937, and duly recorded in book 9 of Miscellaneous Records at page 398, office of the Register of Deeds.

Morton County, Kansas

Filed for record at 3:00 o'clock p. m. on April 13, 1937, and duly recorded in book M of Miscellaneous Records at page 59, office of the Register of Deeds.

Stevens County, Kansas

Filed for record at 11.00 o'clock a. m. on April 13, 1937, and duly recorded in book M of Miscellaneous Records at page 622, office of the Register of Deeds.

Texas County, Oklahoma

Filed for record at 8:00 o'clock a. m. on May 3, 1937, and duly recorded in book 195 at page 227, office of the County Clerk.

[fol. 585] Indenture

Northern Natural Gas Company and Missouri Valley Gas Corporation and Republic Natural Gas Company

Dated April 5, 1937

[fol. 586] Indenture

This Indenture, Made and entered into as of this 5th day of April, 1937.

By and between Northern Natural Gas Company, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, "party of the first part" and Missouri Valley Gas Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, "party of the second part" and Republic Natural Gas Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, "party of the third part".

Witnesseth: Whereas, on the 27th day of May, 1930, a certain instrument in writing designated a "Gas Purchase Contract" was entered into by and between Missouri Valley Gas Company, a Delaware corporation, therein called the "Seller", as party of the first part, The Argus Production Company, a Delaware corporation, therein called "Argus Company", as party of the second part, and Missouri Valley Pipe Line Company, a Delaware corporation, therein called "Buyer", as party of the third part, referring, among other things, to the sale by Missouri Valley Gas Company to the Buyer of natural gas upon the terms and conditions therein set forth; and

[fol. 587] Whereas, said aforementioned parties (Missouri Valley Pipe Line Company now having become Northern Gas and Pipe Line Company, however) entered into another supplemental agreement in writing, dated as of July 1, 1932, amending and supplementing said prior agreement (which agreement, dated as of May 27, 1930, as amended and supplemented by said last mentioned agreement dated as of July 1, 1932, is hereinafter for convenience referred to as the "Gas Purchase Contract"); and

Whereas, on June 28, 1935, Missouri Valley Gas Company transferred, assigned and conveyed all of its properties (including "Gas Purchase Contract") to said Argus Production Company, and the said Argus Production Company entered into a supplemental agreement whereby the Argus Production Company assumed all of the agreements, covenants, obligations and burdens imposed upon and incurred by Missouri Valley Gas Company under the "Gas Purchase Contract"; and

Whereas, the Argus Production Company subsequently changed its name to, and is now known as Missouri Valley Gas Corporation; and

Whereas, Northern Natural Gas Company, party of the first part hereto, has succeeded to all the rights and obligations of said Northern Gas and Pipe Line Company under the "Gas Purchase Contract"; and

Whereas, Republic Natural Gas Company, as the owner of all the capital stock of Missouri Valley Gas Corporation, now desires to cause Missouri Valley Gas Corporation to transfer and convey all of its properties (including the Gas

Purchase Contract) to Republic Natural Gas Company, and Northern Natural Gas Company is willing to consent thereto; and

Whereas, Republic Natural Gas Company, in consideration of such consent, desires hereby to evidence its assump-
[fol. 588] tion of the agreements, undertakings and obligations of Missouri Valley Gas Corporation under the gas purchase contract and its agreement that the properties covered by the gas purchase contract shall be charged with the fulfillment thereof; and

Whereas, said original contract of May 27, 1930, as amended by said amendatory and supplemental agreement of July 1, 1932, has as of the 5th day of April, 1937, been further amended by a Supplemental Indenture between Northern Natural Gas Company and Missouri Valley Gas Corporation, with particular reference to the description of the acreage covered by oil and gas leases dedicated by Missouri Valley Gas Corporation to the performance of said contract, to which last mentioned amendatory and supplemental indenture reference is hereby made.

Now, Therefore, in consideration of the making and performing of the mutual covenants and agreements herein expressed and for a valuable consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the parties do hereby covenant and agree as follows:

First: Northern Natural Gas Company hereby consents to the transfer and conveyance by Missouri Valley Gas Corporation of all of its properties as an entirety, including the "Gas Purchase Contract" of May 27, 1930, as amended, by the said Missouri Valley Gas Corporation and said Northern Natural Gas Company to Republic Natural Gas Company.

Second: That upon the transfer and conveyance to Republic Natural Gas Company of said properties, Republic Natural Gas Company hereby covenants and agrees to and does hereby assume, covenant and agree to carry out and perform each and all of the agreements, undertakings and obligations of Missouri Valley Gas Corporation in and under the aforesaid "Gas Purchase Contract" as now amended, and further covenants and agrees that said prop-
[fol. 589] erties so acquired by Republic Natural Gas Company shall be and are hereby dedicated to and charged with

the fulfillment of said gas purchase contract for the purposes and to the extent provided in said gas purchase contract.

Third: Upon the transfer of properties as aforesaid and the assumption by Republic Natural Gas Company of the undertakings and obligations of said "Gas Purchase Contract," Missouri Valley Gas Corporation shall be relieved of further obligation to Northern Natural Gas Company on account of said "Gas Purchase Contract" and amendments thereto.

In Witness Whereof, Northern Natural Gas Company, Missouri Valley Gas Corporation and Republic Natural Gas Company, have each caused this instrument to be signed in its corporate name, by its President or one of its Vice Presidents, its corporate seal to be hereunto affixed, and such seal to be attested by its secretary or one of its assistant secretaries, all as of the day and year first above written.

Northern Natural Gas Company, (Signed) by F. H. Brooks, Its President. (Seal.)

Attest: (Signed) J. F. Merriam, Its Asst. Secretary.

Witnesses to the Execution Hereof by Northern Natural Gas Company: (Signed) R. J. Organ, Lawrence I. Shaw.

[fol. 590] Missouri Valley Gas Corporation, (Signed) by Alfred Hurlburt, Its Vice President. (Seal.)

Attest: (Signed) Floyd G. Miller, Asst. Secretary.

Witnesses to the Execution Hereof by Missouri Valley Gas Corporation: (Signed) Lyman Chatfield, Jack L. Bianchi.

Republic Natural Gas Company, (Signed) by Wm. H. Wildes, Its President. (Seal.)

Attest: (Signed) Floyd G. Miller, Its Asst. Secretary.

Witnesses to the Execution Hereof by Republic Natural Gas Company: (Signed) Lyman Chatfield, Jack L. Bianchi.

[fol. 591] STATE OF NEBRASKA,
County of Douglas, ss:

Be It Remembered that before me, Geo. E. Calvin, a Notary Public in and for said county and state, on this 5th day of April, 1937, personally appeared F. H. Brooks, to me personally known and to me known to be the President of Northern Natural Gas Company, and the identical person who subscribed the name of Northern Natural Gas Company to the foregoing instrument as its President, and also personally appeared before me on said date J. F. Merriam, to me personally known and to me known to be the Assistant Secretary of Northern Natural Gas Company, and the identical person who affixed the seal of said corporation to said instrument and subscribed the name as Assistant Secretary of said corporation; and the said F. H. Brooks, as such President, and the said J. F. Merriam, as such Assistant Secretary, acknowledged to me that the seal affixed to the said instrument is the corporate seal of said corporation and that they executed said instrument as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Omaha, Neb., this 5th day April, 1937.

(Signed) Geo. E. Calvin, Notary Public. (Seal.)

My commission expires October 14, 1942.

[fol. 592] STATE OF TEXAS,
County of Nueces, ss:

Be It Remembered that before me, Stella Parker, a Notary Public in and for said county and state, on this 8th day of April, 1937, personally appeared Alfred Hurlburt, to me personally known and to me known to be the Vice President of Missouri Valley Gas Corporation and the identical person who subscribed the name of Missouri Valley Gas Corporation to the foregoing instrument as its Vice President, and also personally appeared before me on said date Floyd G. Miller, to me personally known and to me known to be the Assistant Secretary of Missouri Valley Gas Corporation and the identical person who affixed the seal

of said corporation to said instrument, and subscribed the same as Assistant Secretary of said corporation; and the said Alfred Hurlburt, as such Vice President, and the said Floyd G. Miller, as such Asst. Secretary, acknowledged to me that the seal affixed to said instrument is the corporate seal of said corporation and that they executed said instrument as their free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal at Corpus Christi, this 8th day of April, 1937.

(Signed) Stella Parker, Notary Public. (Seal.)

My commission expires June 1, 1937.

[fol. 593]. State of Texas,
County of Nueces, ss:

Be It Remembered that before me, Stella Parker, a Notary Public in and for said county and state, on this 8th day of April, 1937, personally appeared Wm. H. Wildes, to me personally known and to me known to be the President of Republic Natural Gas Company and the identical person who subscribed the name of Republic Natural Gas Company to the foregoing instrument as its President, and also personally appeared before me on said date Floyd G. Miller, to me personally known and to me known to be the Assistant Secretary of Republic Natural Gas Company, and the identical person who affixed the seal of said corporation to said instrument, and subscribed the same as Asst. Secretary of said corporation; and the said Wm. H. Wildes and Floyd G. Miller as such President and Asst. Secretary, respectively, acknowledged to me that the seal affixed to said instrument is the corporate seal of said corporation, and that they executed said instrument as their free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Corpus Christi, this 8th day of April, 1937.

(Signed) Stella Parker, Notary Public. (Seal.)

My Commission expires June 1, 1937.

[fol. 594] RECORDING DATA

Grant County, Kansas

Filed for record at 1:20 o'clock p. m. on May 27, 1937, and duly recorded in book 9 of Miscellaneous Records at pages 427-429, office of the Register of Deeds.

Morton County, Kansas

Filed for record at 3:00 o'clock p. m. on April 13, 1937, and duly recorded in book 21 of Deeds at page 593, office of the Register of Deeds.

Stevens County, Kansas

Filed for record at 11:00 o'clock a. m. on April 13, 1937, and duly recorded in book M of Miscellaneous Records at pages 619-621, office of the Register of Deeds.

Texas County, Oklahoma

Filed for record at 8:00 o'clock a. m. on May 3, 1937, and duly recorded in book 195 at page 225, office of the County Clerk.

[fol. 595] Republic Natural Gas Company
Articles of Incorporation

Certificate of Incorporation Dated November 24, 1934

Certificates of Amendment Dated June 25, 1935, October 29, 1937, March 21, 1939, October 22, 1943, November 25, 1946.

[fol. 596] Certificate of Incorporation of Republic Natural Gas Company

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of 1915, and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First: The name of the corporation is: Republic Natural Gas Company.

Second: The location of its principal office in the State of Delaware is in the City of Dover, County of Kent. The name of the agent therein and in charge thereof is United States Corporation Company, the address of which is No. 19-21 Dover Green in said City.

Third: The objects and purposes for which and for any of which this corporation is formed are to do any and all of the things herein set forth to the same extent as natural persons might or could do, viz:

(1) To establish and maintain an oil business with authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of the same.

(2) To refine, market and distribute crude oil, or petroleum and all its products; to locate, purchase, lease or otherwise acquire and to sell, mortgage or otherwise dispose of lands containing or believed to contain petroleum, oil [fol. 597] or natural gas, or either of them, and to drill or prospect for or produce the same; to purchase, lease or otherwise acquire, and to sell, mortgage or otherwise dispose of developed or producing oil and gas properties or the products of such oil or gas properties; to purchase, produce, refine, sell and distribute natural gas, petroleum and all of the products and by-products thereof; to buy, sell or otherwise dispose of, and manufacture all kinds of illuminating, burning and heating oils, and gasoline, naphtha, lubricants, greases, waxes and all other products and by-products of petroleum; to act as broker or agent for others in all of said acts.

(3) To mine for, produce, buy, acquire, use, sell and distribute natural gas for light, heat, power, and other purposes, and also to produce, acquire, use, sell, and distribute the by-products and residual products therefrom, and to construct or in any manner acquire, maintain, operate, encumber, sell, or in any manner dispose of works therefor, and any and all necessary equipment and appurtenances necessary or incident to such operations and business;

(4) To produce, generate, acquire, buy, use, sell, distribute or otherwise dispose of, furnish and distribute a

mixture of, artificial and natural gas for light, heat, power, and other purposes, and also to produce, acquire, use, sell and distribute the by-products and residual products therefrom, and to construct or in any manner acquire, maintain, operate, encumber, sell, or in any manner dispose of works therefor, and any and all equipment and appurtenances relating or incident thereto;

(5) To store, transport, buy and sell oil, gas, salt, brine and other mineral solution, also sand and clay for the manufacture and sale of clay products;

(6) To manufacture, acquire, distribute, use, and sell artificial gas for light, heat, power, and other purposes, and to produce, acquire, use sell, and distribute the by-[fol. 598] products and residual products therefrom, and to construct or in any manner acquire, maintain, operate, encumber, sell, or in any manner dispose of works therefor, and all necessary equipment and appurtenances therefor;

(7) To engage in the business of acquiring by purchase, lease or otherwise, constructing, holding, owning, managing, operating and leasing, selling or otherwise disposing of, electric power systems and plants, electric and other lighting and heating systems and plants, any or all businesses, factories, plants, workshops, stores and warehouses allied thereto or connected therewith, and the real property, plant, equipment, appurtenances, machinery, vehicles, inventories receivables, or any part thereof, and any and all other assets of any person, firm, association or corporation engaged in such businesses or any of them, and assuming, or taking such property subject to, any obligations or liabilities thereof, to promote, manage, control, supervise, direct or aid in any manner any such operations, business, production, output, and sales; and to make, execute, take or receive any contracts or assignments of contracts therefor or relating thereto, or connected therewith.

(8) To construct, lay, purchase, or in any manner acquire, and to maintain and operate, and to sell, encumber, or in any manner dispose of, pipelines, gas mains, plants, systems, and works for the use, sale, distribution and transportation of oil, natural, artificial and mixed gas for light, heat, power, and other purposes in, over, through or under any streets, alleys, roads, highways, or other public places, or in, over, through or under any private or public property,

and to take, acquire, purchase, hold, own, rent, lease, sell, exchange, mortgage, improve, cultivate, develop and otherwise deal in and dispose of any and all property, real and personal, of every description incident to or capable of being used in connection with the aforesaid purposes or any of them;

[fol. 599] (9) To acquire, manufacture, and deal in ice, to purchase, construct, own, maintain, and operate all kinds of refrigerating and ice making plants or properties and to dispose of the products thereof;

(10) To subscribe for, purchase, acquire, invest in, hold, own, assign, pledge, and otherwise dispose of shares of capital stock, bonds, mortgages, debentures, notes, and other securities, obligations, contracts, and evidences of indebtedness of any other corporation, whether foreign or domestic, and whether now or hereafter organized; and to issue in exchange therefor the stocks, bonds, or obligations of the corporation; to assume obligations on bonds, notes, or other evidences of indebtedness of any corporation, domestic or foreign or of any State, County or Municipality, or division thereof; to exercise, in respect to any such shares of stocks, bonds, mortgages, debentures, notes, or other securities, obligations, contracts, and evidences of indebtedness any and all rights, powers, and privileges of individual ownership, including with respect to stock, the right to vote thereon;

(11) To guarantee by endorsement or otherwise the payment of any obligations or indebtedness, to aid in any manner any corporation or association of which any stocks, bonds, or other obligations are held by the corporation, and to do any acts or things designed to preserve, protect, improve, or enhance the value of any such stocks, bonds or other obligations; to acquire, own, and hold such real and personal property as may be necessary or convenient for the transaction of its business;

(12) To manufacture, purchase, or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, to invest, trade, deal in and deal with goods, wares, and merchandise, and real and personal property of every class and description; and in particular lands, buildings, business concerns, and undertakings, mortgages, shares, stocks, debentures, securities, concessions,

[fol. 600] produce, policies, back debts, and claims, and any interest in real or personal property, and any claims against such property, or against any person or corporation, and to carry on any business, concern, or undertaking so acquired;

(13) To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes trademarks, and trade names, relating to or useful in connection with any business of the corporation; to enter into, make, perform and carry out contracts of every kind, for any lawful purpose, without limit as to amount, with any person, firm, association or corporation;

(14) When not in conflict with the General Corporation Law or otherwise contrary to law to purchase or otherwise acquire, hold, own, exercise, exploit and develop, any and all grants, options, concessions, privileges, rights, and franchises which may be deemed to be in the best interests of the corporation, and to undertake, engage in, and prosecute any business connected therewith or dependent thereon, and for the corporate purposes of this corporation to make and enter into and carry out any contracts, arrangements, or undertakings with any person, individual, firm, corporation, syndicate, or association, or with any domestic or foreign state or governmental or municipal authority;

(15) To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, warrants, and other negotiable or transferable instruments;

(16) To issue bonds, debentures, notes, or other obligations of the corporation from time to time, for any of the objects or purposes of the corporation, and to secure them by mortgage, pledge, deed of trust, or other lien upon all or any part of the properties of the corporation;

[fol. 601] (17) To purchase, hold and re-issue the shares of its capital stock;

(18) To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount; to purchase, or otherwise acquire, to

hold, own, to mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories, or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, Territory, Colony or Country;

(19) To carry on as principal, agent, factor, commission merchant, or otherwise, the said business or businesses hereinbefore referred to, and each and every part thereof;

20. To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, either alone or in association with other corporations, firms or individuals, and to do every other act or acts, thing or things incidental or appurtenant to or growing out of or connected with the aforesaid business or powers or any part or parts thereof; and to have all the rights, powers and privileges now or hereafter conferred by the laws of the State of Delaware upon a corporation organized under the General Corporation Law of the State of Delaware, or under any act amendatory thereof, supplemental thereto or in substitution therefor.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the enumeration herein of specific objects and powers shall not be held to limit or restrict in any way the general powers of the corporation. Nothing herein contained shall be deemed to authorize the corporation to carry on any business or exercise any power or to do any act which a [fol. 602] corporation organized under said General Corporation Law may not at the time lawfully carry on, exercise, or do.

Fourth: The total number of shares of capital stock which may be issued by the corporation is one thousand (1,000) shares of Common Stock of the par value of $1.00 per share.

The amount of capital with which the corporation will commence business shall not be less than One Thousand ($1,000) Dollars.

Fifth: The names and places of residence of each of the incorporators are as follows:

Names	*Addresses*
Charles H. Jarvis	Dover, Delaware.
M. S. Cook	Dover, Delaware.
J. M. Townsend	Dover, Delaware.

Sixth: The corporation is to have perpetual existence.

Seventh: The private property of the shareholders shall not be subject to the payment of the corporate debts to any extent whatever.

Eighth: The following provisions are inserted for the regulation of the business and for the conduct of the affairs of the corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

1. Meetings of the stockholders and directors of the corporation for all purposes may be held within or without the State of Delaware at such place or places as may from time to time be designated in the by-laws or by resolution of the Board.

2. The number of directors of the corporation shall be fixed and may be altered from time to time as may be pro- [fol. 603] vided in the by-laws. In case of any increase in the number of directors, the additional directors may be elected by the directors or by the stockholders at an annual or special meeting, as shall be provided in the by-laws. The by-laws may prescribe the number of directors necessary to constitute a quorum, which number may be less than a majority of the whole Board of Directors but not less than the number required by law. The election of directors need not be by ballot.

3. All corporate powers, including the sale, mortgage, hypothecation and pledge of the whole or any part of the corporate property, shall be exercised by the Board of Directors, except as otherwise expressly provided by law. The directors shall also have power, with the consent in writing of a majority of the holders of the stock issued

and outstanding entitled to vote, or upon the affirmative vote of the holders of a majority of the stock issued and outstanding entitled to vote, to sell, lease or exchange all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions as the Board of Directors deem expedient and for the best interests of the corporation.

4. Without assent or other action of the stockholders, unless otherwise expressly provided by law, the Board of Directors may purchase, acquire, hold, lease, or exchange all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions as the Board of Directors deem expedient and for the best interest of the corporation.

5. Without assent or other action of the stockholders, unless otherwise expressly provided by law, the Board of Directors may purchase, acquire, hold, lease, mortgage, pledge, sell and convey such property, real or personal, without as well as within the State of Delaware, as the Board of Directors may, from time to time, determine; [fol. 604] and, in payment for any property, it may issue or cause to be issued stock of the corporation, bonds, debentures, or other obligations thereof, secured or unsecured.

6. The Board of Directors shall have power from time to time to fix and to determine and vary the amount of the working capital of the corporation and to direct and determine the use and disposition of any net profits or surplus from whatever source arising, and in its discretion the Board of Directors may use and apply any such profits or surplus in purchasing or acquiring bonds or other obligations of the corporation or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient, and any shares of such capital stock so purchased or acquired may be re-sold upon such terms as the Board of Directors may determine, unless such shares shall have been retired in the manner provided by law for the purpose of decreasing the corporation's authorized capital stock.

7. The Board of Directors of the corporation is hereby given full authority to define and/or prescribe the terms and conditions of any rights to subscribe to capital stock

of the corporation whether such rights shall exist or be issued in connection with the sale of stocks and/or obligations or securities of the corporation or otherwise, and to evidence such rights by warrants or other instruments and to prescribe in any agreement or other instrument and/or in such warrants the terms upon which such warrants and/or other instruments may be exercised, and the terms and provisions of such warrants and any other instruments or agreements consistent with the provisions of this certificate prescribing and defining the rights of the holders thereof to subscribe to stock of the corporation when approved by the Board of Directors shall be binding upon all the stockholders (present and future) of the corporation the same as if herein set forth in full.

8. The Board of Directors shall have absolute discretion [fol. 605] in the declaration of dividends out of the surplus or net profits of the corporation, and, instead of distributing the surplus or net profits among the stockholders may invest and reinvest the same to such extent and in such manner as in their absolute discretion they may deem advisable.

9. The Board of Directors from time to time shall determine whether, to what extent, at what times and places, and under what conditions and regulations the accounts, books and papers of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account, books or paper of the corporation except as expressly conferred by statute or authorized by the Board of Directors or by the stockholders.

10. The Board of Directors may, by a resolution passed by a majority of the whole Board, designate from their number an executive committee, which, to the extent provided by such resolution or by the by-laws of the corporation, shall have and may exercise in the intervals between meetings of the Board of Directors all the powers thereof which may lawfully be delegated, in the management of the business and affairs of the corporation. The Board of Directors may also designate from their number a finance committee and other committees and delegate thereto such of its powers as may be lawfully delegated, to be exercised when the Board of Directors is not in session.

11. Subject always to by-laws made by the stockholders, the Board of Directors may make by-laws and from time to time may alter, amend or repeal any by-laws, and any by-laws made by the Board of Directors may be altered or repealed by the stockholders.

12. Any one or more or all of the directors may be removed, either with or without cause, at any time, by vote of the stockholders holding a majority of the stock of the corporation entitled to vote present in person or by proxy, at any special meeting, and thereupon the term of the di- [fol. 606] rector or directors who shall have been so removed shall forthwith terminate and there shall be a vacancy or vacancies in the Board of Directors to be filled as provided in the by-laws.

13. The directors shall have power, with the consent in writing or upon the affirmative vote of the holders of a majority of the stock issued and outstanding entitled to vote, to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, for such consideration and upon such terms and conditions as the Board of Directors deem expedient and for the best interests of the corporation.

Ninth: No contract or other transaction between the corporation and any person, firm, association or corporation shall be affected or invalidated by the fact that one or more of the directors or officers of the corporation is or are interested in or is a member, director or officer of any firm, association or corporation which is a party to a contract with the corporation, and any director or officer may be a party individually or jointly in such contract or transaction without liability to the corporation or to its stockholders or creditors, and all such contracts, acts and transactions shall be binding upon the corporation and its stockholders and no ratification by stockholders or others of any such act, contract or transaction shall be necessary to the validity thereof.

Tenth: The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

In witness whereof, we have hereunto set our hands and seals, the 24th day of November, 1934.

Charles H. Jarvic (L. S.), M. S. Cook (L. S.), J. M. Townsend (L. S.).

In the presence of: M. A. Durr.

[fol. 607] STATE OF DELAWARE,
County of Kent, ss:

On the 24th day of November, 1934, before me came Charles H. Jarvis, M. S. Cook and J. M. Townsend, to me known to be the individuals described in, and who executed the foregoing instrument, and acknowledged that they executed the same.

Lillian H. Wallace, Notary Public.

Lillian H. Wallace, Notary Public, Appointed Sept. 5, 1933 for two years. Delaware.

(Here follows 1 Photolithograph, side folio 608).

State of Delaware

Office of Secretary of State

I, **William J. Storey**, *Secretary of State of the State of Delaware,* **do hereby certify** *that the above and foregoing is a true and correct copy of*

Certificate of Incorporation of the "REPUBLIC NATURAL GAS COMPANY", as received and filed in this office the twenty-fourth day of November, A. D. 1934, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eleventh day of September in the year of our Lord one thousand nine hundred and forty-four.

Secretary of State

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3844

[fol. 609] Certificate of Amendment of Certificate of Incorporation of Republic Natural Gas Company, June 25, 1935

[fol. 610] (Adopted in Accordance With the Provisions of Section 26 of Chapter 65 of the Revised Code, as Amended, of the State of Delaware)

We, David H. Jackman, President, and Charles N. Caldwell, Jr., Secretary of Republic Natural Gas Company, a corporation existing under the laws of the State of Delaware, do hereby certify under the seal of the said corporation as follows:

First: That it appears by the certificate of George V. Reilly and Raymond J. Gorman, the judges who were duly appointed by the stockholders of the corporation at a meeting duly called in accordance with the by-laws and the laws of the State of Delaware and held on the 25th day of June, 1935, at four o'clock in the afternoon to conduct the vote of the stockholders of the corporation for and against proposed amendments to its Certificate of Incorporation; that the persons or bodies corporate holding one thousand (1,000) shares of the capital stock of the corporation, constituting the entire issued and outstanding capital stock of the corporation, voted in favor of such amendments.

Second: That the following is a true and correct copy of the amended paragraphs 2, 5, 10, 12, 13, 16, 18 and 19 of Article Third and the Amended Article Fourth and Article Eighth of the Certificate of Incorporation as they were adopted at the stockholders' meeting as aforesaid.

"Article Third

"(2) To mine, refine, market and distribute crude oil, petroleum, coal, sulphur and other minerals and all their products; to locate, purchase, lease or otherwise acquire, and to sell, mortgage or otherwise dispose of [fol. 611] lands containing or believed to contain petroleum, oil, natural gas, coal, sulphur, or other minerals or any of them, and to drill, prospect for, mine or produce the same; to purchase, lease, or otherwise acquire, and to sell, mortgage or otherwise dispose of developed or producing oil or gas properties, coal, sul-

phur or other mineral mines or the products of any of them; to purchase, produce, refine, sell and distribute natural gas, petroleum, coal, sulphur and other minerals and all of the products and by-products thereof; to buy, sell and otherwise dispose of, and manufacture all kinds of illuminating, burning and heating oils, and gasoline, naphtha, lubricants, greases, waxes and all other products and by-products of petroleum, coal, sulphur and other minerals; to act as broker or agent for others in all of said acts;

"(5) To store, transport, buy and sell oil, gas, salt, brine and other mineral solutions, also sand and clay for the manufacture and sale of clay products;

"(10) To subscribe for, purchase, acquire, invest in, hold, own, assign, pledge, and otherwise dispose of shares of capital stock, bonds, mortgages, debentures, notes, and other securities, obligations, contracts, and evidences of indebtedness of any other corporation, whether foreign or domestic, and whether now or hereafter organized, whether engaged in the same business as the corporation or any business whatsoever; and to issue in exchange therefor the stocks, bonds, or obligations of the corporation; to assume obligations on bonds, notes or other evidences of indebtedness of any corporation, domestic or foreign or of any State, County or Municipality, or division thereof; to exercise, in respect to any such shares of stocks, bonds, mortgages, debentures, notes, or other securities, obligations, contracts, and evidences of indebtedness, any and all rights, powers and privileges of individual ownership, including with respect to stock, the right to vote thereon;

"(12) To manufacture, purchase, or otherwise ac- [fol. 612] quire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise, and real and personal property of every class and description, whether or not related to or in connection with any other business or purpose specifically referred to herein; and in particular lands, buildings, business concerns, and undertakings, mortgages, shares, stocks, debentures, securities, concessions, produce, policies, bank debts, and claims, and any interest in real

or personal property, and any claims against such property, or against any person or corporation, and to carry on any business concern, or undertaking so acquired;

"(13) To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes, trademarks, and trade names, relating to or useful in connection with any lawful business whatsoever, whether or not the corporation shall then be engaged therein; to enter into, make, perform and carry out contracts of every kind, for any lawful purpose, without limit as to amount, with any person, firm, association or corporation;

"(16) To issue bonds, debentures, notes, or other obligations of the corporation from time to time, for any of the objects or purposes of the corporation, and, at its election, to secure them by mortgage, pledge, deed of trust, or other lien upon all or any part of the properties of the corporation;

"(18) To have one or more officers, to carry on all or any of its operations and business and without restriction or limit as to amount; to purchase, or otherwise acquire, to hold, own, to mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories, or Colonies of the United States, and in any and all foreign countries, subject to the laws of [fol. 613] such State, District, Territory, Colony or Country;

"(19) To carry on as principal, agent, factor, commission merc-ant, or otherwise, any business or businesses hereinbefore referred to, and each and every part thereof;"

Article Fourth of the Certificate of Incorporation of the Corporation is amended to read as follows:

"Fourth: The total number of shares of capital stock which may be issued by the corporation is one million seven hundred thousand (1,700,000) shares of Common Stock of the par value of $1.00 per share.

Nine hundred and three thousand, six hundred and twenty-five (903,625) shares of the common stock shall be reserved for the conversion of the 6% Convertible Income Bonds of the corporation issued or to be issued under an Indenture dated as of January 1, 1935 between the corporation and The First National Bank of Chicago and Roy C. Osgood, Trustees, and shall be issued for no other purpose.

The entire voting power shall be vested in the common stock, except as hereinafter provided.

There is hereby conferred upon the registered holders of 6% Convertible Income Bonds of the corporation issued or to be issued under said Indenture, the power to vote in respect to the corporate affairs and management of the corporation to the same extent and in the same manner as stockholders of the corporation in the following manner and subject to the following conditions:

Whenever and as long as a cumulative semi-annual interest payment of the rate of 6% per annum on the outstanding 6% Convertible Income Bonds, payable on or after September 1, 1937, shall be unpaid, the registered holders of said 6% Convertible Income Bonds shall be entitled to vote at all meetings of stockholders and each such holder shall be entitled to as many votes as if he had exercised the conversion rights existing under said 6% Convertible Income Bonds and were the holder of the number of shares issuable upon conversion of such bonds upon the date on which such [fol. 614] voting power is exercised. Such voting power shall not extend beyond the date on which the right to convert said 6% Convertible Income Bonds shall cease.

If a default in the payment of a cumulative semi-annual interest payment on the 6% Convertible Income Bonds shall have occurred and shall have continued for a period of ninety (90) days, the holders of five per cent (5%) of the principal amount of such 6% Convertible Income Bonds then outstanding may call a meeting of stockholders and the holders of such bonds, in the manner provided in the by-laws, for the election of a new board of directors.

At all times during which the registered holders of 6% Convertible Income Bonds shall be entitled to vote as hereinabove provided, such registered holders shall be entitled to receive notice of all meetings of stockholders of the corporation, in the manner provided in the by-laws of the corporation, and by law, such notice to be mailed to such

registered holders at their respective addresses appearing on the registry books of the corporation.

If while the holders of the 6% Convertible Income Bonds shall have voting powers all cumulative interest on the said bonds shall be paid in full, the holders of five per cent (5%) of the number of shares of voting stock outstanding may call a meeting of stockholders in the manner provided in the by-laws for the election of a new Board of Directors.

The amount of capital with which the corporation will commence business shall not be less than One Thousand Dollars ($1,000)."

Article Eight is amended to read as follows:

"Eighth: The following provisions are inserted for the regulation of the business and for the conduct of the affairs of the corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

1. Meetings of the stockholders and directors of the corporation for all purposes may be held within or without the State of Delaware at such place or places as [fol. 615] may from time to time be designated in the by-laws or by resolution of the Board.

2. The number of directors of the corporation shall be fixed and may be altered from time to time as may be provided in the by-laws, provided, however, that until the annual meeting of stockholders in 1936 the Board of Directors shall not exceed seven members without the consent in writing or the affirmative vote of the holders of a majority of the common stock. In case of any increase in the number of directors, the additional directors may be elected by the directors or by the stockholders at an annual or special meeting, as shall be provided in the by-laws. The by-laws may prescribe the number of directors necessary to constitute a quorum, which number may be less than a majority of the whole Board of Directors but not less than the number required by law. The election of directors need not be by ballot.

3. All corporate powers, including the purchase or acquisition of any property, the mortgage, hypotheca-

tion and pledge of the whole or any part of the corporate property and the sale of any part of the corporate property, real and/or personal, shall be exercised by the Board of Directors, except as otherwise expressly provided herein or by law. In payment for any property, the Board of Directors may issue or cause to be issued stock of the corporation, bonds, debentures, or other obligations thereof, secured or unsecured; provided, however, that the Board of Directors shall not, without the consent in writing or the affirmative vote of the holders of a majority of the common stock at the time outstanding, authorize or issue any new class of stock or create or incur any funded indebtedness other than the First Mortgage and Collateral Bonds issued or to be issued under an Indenture dated as of January 1, 1935, between Continental Illinois National Bank and Trust Company and Edmond B. Stofft, as Trustees, and the corporation, and the $3,614,500 princi- [fol. 616] pal amount of 6% Convertible Income Bonds issued or to be issued under an Indenture dated as of January 1, 1935, between The First National Bank of Chicago and Roy C. Osgood, as Trustees, and the corporation. The directors shall have power, with the consent in writing of the holders of stock and securities issued and outstanding having at the time a majority of voting rights, or upon the affirmative vote of the holders of stock and securities issued and outstanding, having at the time a majority of voting rights, to sell, lease or exchange all of its property and assets, including its good-will and its corporate franchises, upon such terms and conditions as the Board of Directors deem expedient and for the best interest of the corporation.

4. The Board of Directors shall have power from time to time to fix and to determine and vary the amount of the working capital of the corporation and to direct and determine the use and disposition of any net profits or surplus from whatever source arising, and in its discretion the Board of Directors may use and apply any such profits or surplus, and any other assets to the extent permitted by law, in purchasing or acquiring bonds or other obligations of the corporation or shares of its own capital stock, to such extent and in such man-

ner and upon such terms as the Board of Directors shall deem expedient; and any shares of such capital stock so purchased or acquired may be resold upon such terms as the Board of Directors may determine, unless such shares shall have been retired in the manner provided by law for the purpose of decreasing the corporation's authorized capital stock.

5. The Board of Directors of the corporation is hereby given full authority to define and/or prescribe the terms and conditions of any rights to subscribe to capital stock of the corporation whether such rights shall exist or be issued in connection with the sale of stocks and/or obligations or securities of the corporation or otherwise, and to evidence such rights by warrants or other instruments and to prescribe in any [fol. 617] agreement or other instrument and/or in such warrants the terms upon which such warrants and/or other instruments may be exercised, and the terms and provisions of such warrants and any other instruments or agreements consistent with the provisions of this certificate prescribing and defining the rights of the holders thereof to subscribe to stock of the corporation when approved by the Board of Directors shall be binding upon all the stockholders (present and future) of the corporation the same as if herein set forth in full.

6. The Board of Directors shall have absolute discretion in the declaration of dividends out of the surplus or net profits of the corporation, and, instead of distributing the surplus or net profits among the stockholders, may invest and reinvest the same to such extent and in such manner as in its absolute discretion it may deem advisable.

7. The Board of Directors from time to time shall determine whether, to what extent, at what times and places, and under what conditions and regulations the accounts, books and papers of the corporation, or any of them, shall be open to the inspection of the stockholders and security holders; and no stockholder or security holder shall have any right to inspect any account, book or paper of the corporation except as expressly conferred by statute or authorized by the Board

of Directors or by the stockholders and security holders at the time having voting rights.

8. The Board of Directors may, by a resolution passed by a majority of the whole Board, designate from its number an executive committee, which, to the extent provided by such resolution or by the by-laws of the corporation, shall have and may exercise in the intervals between meetings of the Board of Directors all the powers thereof which may lawfully be delegated, in the management of the business and affairs of the corporation. The Board of Directors may also designate from its number a finance committee and other committees and delegate thereto such of its powers [fol. 618] as may be lawfully delegated, to be exercised when the Board of Directors is not in session.

9. Subject always to by-laws made by the stockholders and security holders at the time having voting rights, the Board of Directors may make by-laws and from time to time may alter, amend or repeal any by-laws, and any by-laws made by the Board of Directors may be altered or repealed by the stockholders and security holders at the time having voting rights.

10. After the annual meeting of the Corporation in 1936 any one or more or all of the directors may be removed, either with or without cause, at any time, by vote of the holders of stock and securities having at the time a majority of the voting rights, present in person or by proxy, at any special meeting, and thereupon the term of the director or directors who shall have been so removed shall forthwith terminate and there shall be a vacancy or vacancies in the Board of Directors to be filled as provided in the by-laws."

Third: That such amendments have been duly adopted in accordance with the provisions of Section 26 of Chapter 65 of the Revised Code, as amended, of the State of Delaware, and that the capital of the corporation will not be reduced under or by reason of said amendments.

In Witness Whereof, we, David H. Jackman, President, and Charles N. Caldwell, Jr., Secretary, of Republic Natural Gas Company have signed this certificate and caused the

corporate seal of the corporation to be hereunto affixed this 25th day of June, 1935.

David H. Jackman, President; Charles N. Caldwell, Jr., Secretary.

Republic Natural Gas Company, Delaware, 1934.

[fol. 619] State of New York,
County of New York, ss:

Be it remembered that on this 25th day of June, 1935 personally came before me George V. Reilly, a notary public in and for the county and state aforesaid, duly commissioned and sworn to take acknowledgment or proof of deeds, David H. Jackman, President of Republic Natural Gas Company, a corporation of the State of Delaware, the corporation described in the foregoing certificate, known to me personally to be such, and he the said David H. Jackman, as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and made on behalf of said corporation; that the signatures of the said President and of the Secretary of said corporation to the foregoing certificate are in the handwriting of the said President and of the Secretary of said corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation, and that the act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the stockholders of said corporation.

In Witness Whereof I have hereunto set my hand and seal of office the day and year aforesaid.

George V. Reilly, Notary Public, N. Y. County Clerk's No. 55.

My commission expires March 30, 1937.
George V. Reilly, Notary Public, New York County.

(Here follows 1 Photolithograph, side folio 620)

State of Delaware

Office of Secretary of State.

I, **William J. Storey**, *Secretary of State of the State of Delaware*, **do hereby certify** *that the above and foregoing is a true and correct copy of* Certificate of Amendment of Certificate of Incorporation of the "REPUBLIC NATURAL GAS COMPANY", as received and filed in this office the twenty-sixth day of June, A. D. 1935, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eleventh day of September in the year of our Lord one thousand nine hundred and forty-four.

Secretary of State.

620

3914

[fol. 621] Certificate of Amendment to Certificate of Incorporation of Republic Natural Gas Company, October 29, 1937

[fol. 622] We, W. H. Wildes, President, and L. J. Golden, Secretary of Republic Natural Gas Company, a corporation existing under the laws of the State of Delaware, do hereby certify under the seal of the said corporation as follows:

First: That it appears by the certificate of Stella Parker and Jack L. Bianchi, the judges who were duly appointed by the stockholders of the corporation at a meeting duly called in accordance with the by-laws and the laws of the State of Delaware, and held on the 5th day of October, 1937, at two-thirty o'clock in the afternoon to conduct the vote of the stockholders of the corporation for and against a proposed amendment of the Certificate of Incorporation as heretofore amended; that the persons or bodies corporate holding one million, twenty-two thousand, three hundred ninety-three (1,022,393) shares of one million, six hundred thirty-eight thousand one hundred thirty-two (1,638,132) shares of the issued and outstanding capital stock of the corporation, constituting a majority, voted in favor of such amendment.

Second: That the following is a true and correct copy of the amended paragraph 3 of Article Eighth:

"Article Eighth

"3. All corporate powers, including the purchase or acquisition of any property, the mortgage, hypothecation and pledge of the whole or any part of the corporate property and (subject only to the provisions of the General Corporation Law of the State of Delaware requiring the affirmative vote or written consent of the holders of a majority of the stock issued and outstanding to a sale, lease or exchange of all the property and [fol. 623] assets of the corporation including its good will and corporate assets) the sale of any part of the corporate property, real and/or personal, shall be exercised by the Board of Directors. In payment for any property or for any other corporate purpose, the Board of Directors may issue or cause to be issued stock of the Corporation, bonds, debentures or other obligations thereof, secured and unsecured; provided, however, that no new class of stock may be authorized or issued without the affirmative vote of the holders of a majority of the issued and outstanding stock and compliance

with the pertinent provisions of the General Corporation Law of the State of Delaware."

Third: That such amendment has been duly adopted in accordance with the provisions of Section 26 of Chapter 65 of the Revised Code, as amended, of the State of Delaware, and that the capital of the corporation will not be reduced under or by reason of said amendment.

In witness whereof, we, W. H. Wildes, President, and L. J. Golden, Secretary, of the Republic Natural Gas Company have signed this certificate and caused the corporate seal of the corporation to be hereunto affixed this 29th day of October, 1937.

W. H. Wildes, President; L. J. Golden, Secretary.

Republic Natural Gas Company, Delaware, 1934.

[fol. 624] STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered that on this 29 day of October, 1937, personally came before me, the undersigned, a Notary Public in and for the county and state aforesaid, duly commissioned and sworn to take acknowledgment or proof of deed, W. H. Wildes, President of Republic Natural Gas Company, a corporation of the State of Delaware, the corporation described in the foregoing certificate, known to me personally to be such, and he the said W. H. Wildes, as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and made on behalf of said corporation, that the signatures of the said President and of the Secretary of said corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation, and that the act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the stockholders of said corporation.

In witness whereof I have hereunto set my hand and seal of office the day and year aforesaid.

Mary M. Gannon, Notary Public.

My Commission expires 9/11/38.

Mary M. Gannon, Notary Public, Cook County, Ill.

(Here follows 1 Photolithograph, side folio 625)

State of Delaware

Office of Secretary of State

I, William J. Storey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Amendment of the "REPUBLIC NATURAL GAS COMPANY", as received and filed in this office the first day of November, A. D. 1937, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eleventh day of September in the year of our Lord one thousand nine hundred and forty-four.

Secretary of State

396A

[fol. 626] Certificate of Amendment of the Certificate of Incorporation of Republic Natural Gas Company, March 21, 1939

[fol. 627] We, W. H. Wildes, President, and L. J. Golden, Secretary of Republic Natural Gas Company, a corporation organized and existing under the laws of the State of Delaware, do hereby certify under the seal of said Corporation as follows:

1. That at a meeting of the Board of Directors of said Corporation, duly held and convened, a resolution was adopted setting forth and declaring advisable the following proposed amendment to the Certificate of Incorporation of said Corporation, as amended, and calling a special meeting of the stockholders of said Corporation entitled to vote in respect thereof for the consideration of said proposed amendment, which read as follows:

"The Certificate of Incorporation of the Corporation, as heretofore amended, is hereby amended as follows:

1. By striking out the whole of Article Fourth thereof, and substituting in lieu thereof a new Article Fourth to read as follows:

Article Fourth: The total number of shares of Capital stock which may be issued by the Corporation is One Million Three Hundred Thousand (1,300,000) shares of Common Stock of the par value of Two Dollars ($2) per share.

The 1,648,230.005 shares of the Common Stock of the Corporation of the par value of One Dollar ($1) per share, heretofore issued and constituting all of the shares of the Corporation outstanding at the time of the filing with the Secretary of State of Delaware of the Certificate of Amendment embodying this amendment, shall be and the same hereby are reclassi-
[fol. 628] fied and changed into 824,115.0025 shares of Common Stock of the par value of Two Dollars ($2) per share. The manner in which the reclassification of such outstanding shares of Common Stock, One Dollar ($1) par value, shall be effected, shall be as follows:

(a) The shares of Common Stock, One Dollar ($1) par value, of the Corporation heretofore issued and being outstanding at the time of the filing of the Certificate of

Amendment, embodying this amendment shall, by virtue hereof, be changed into one-half as many shares of Common Stock of the Corporation of the par value of Two Dollars ($2) per share, that is to say 824,115.0025 shares. The authority of the Corporation to issue the shares of Common Stock of the par value of One Dollar ($1) per share, which at the date of filing the Certificate of Amendment embodying this amendment are authorized but unissued, shall be and it is hereby revoked and nullified.

(b) Each holder of shares of Common Stock of the Corporation outstanding at the time of the filing of the Certificate of Amendment embodying this amendment shall, upon surrender of the certificate or certificates representing such shares, be entitled to receive a certificate or certificates representing such number of shares of Common Stock of the Corporation of the par value of Two Dollars ($2) per share as shall be equal to one-half (½) of the number of shares of Common Stock, One Dollar ($1) par value, held by such holder. In order to enable the Corporation to avoid the issuance of certificates evidencing fractional parts of shares, it may purchase from stockholders any fractional shares to which they are entitled, or it may sell such additional fractional shares to such stockholders as will entitle them to whole shares (that is without fractions) such purchases or sales to be at such price or prices as shall be fixed by the Board of Directors.

Each share of stock shall be entitled to one vote upon [fol. 629] any and all matters which may at any time be submitted at any meeting of stockholders or with respect to which consents of stockholders are requested.

2. By adding to clause 3 of Article Eighth of said Certificate of Incorporation, as heretofore amended, a paragraph to read as follows:

In furtherance and not in limitation of such power, the Board of Directors of the Corporation is hereby expressly authorized, without further action by the stockholders, to refund the First Mortgage and Collateral Bonds of the Corporation issued and outstanding under that certain Indenture dated as of January 1, 1935, by and between the Corporation and Continental

Illinois National Bank and Trust Company of Chicago and Edmond B. Stofft, as Trustees, by the issuance of bonds of the Corporation in a principal amount equal to the principal amount of such First Mortgage and Collateral Bonds outstanding at the time of the issuance of such refunding bonds; to secure such refunding bonds by a mortgage or lien upon the whole or any part of the property of the Corporation; to fix the terms, conditions and provisions of such bonds and of any indenture or indentures securing such bonds, providing therein, in manner similar to said indenture securing the presently outstanding First Mortgage and Collateral Bonds of the Corporation, for the issuance, without further authorization or consent by the stockholders, of additional bonds thereunder in series, ratably secured with such refunding bonds, without limit as to amount except as limited by compliance with such restrictive provisions as shall be formulated by the Board of Directors and therein incorporated; and to confer upon the holders of bonds issuable under said indenture or indentures the option to convert such bonds into shares of Common Stock of the Corporation at such time or times and at such price or prices per share, which shall not in any event be less than $12.50 per share (that is, at the rate of eight (8) shares of [fol. 630] Common Stock, $2 par value, for each $100 principal amount of such bonds) as the Board of Directors may determine; and to sell or otherwise dispose of such bonds to such persons, firms or corporations for such consideration and upon such terms and conditions as the Board of Directors may determine. If in the judgment of the Board of Directors it is advisable so to do, it may accomplish such refunding through the issuance of debentures or other unsecured obligations in lieu of bonds as in this clause authorized, and in that event the Board of Directors may fix the terms, conditions and provisions of such debentures or other unsecured obligations and of any indenture or indentures whereunder they are issuable, incorporating therein provisions similar to those above authorized with respect to refunding bonds and the indenture or indentures securing the same, particularly including (but not exclusively) a provision conferring a like privilege upon the holders thereof of converting the same (sub-

Amendment, embodying this amendment shall, by virtue hereof, be changed into one-half as many shares of Common Stock of the Corporation of the par value of Two Dollars ($2) per share, that is to say 824,115.0025 shares. The authority of the Corporation to issue the shares of Common Stock of the par value of One Dollar ($1) per share, which at the date of filing the Certificate of Amendment embodying this amendment are authorized but unissued, shall be and it is hereby revoked and nullified.

(b) Each holder of shares of Common Stock of the Corporation outstanding at the time of the filing of the Certificate of Amendment embodying this amendment shall, upon surrender of the certificate or certificates representing such shares, be entitled to receive a certificate or certificates representing such number of shares of Common Stock of the Corporation of the par value of Two Dollars ($2) per share as shall be equal to one-half (½) of the number of shares of Common Stock, One Dollar ($1) par value, held by such holder. In order to enable the Corporation to avoid the issuance of certificates evidencing fractional parts of shares, it may purchase from stockholders any fractional shares to which they are entitled, or it may sell such additional fractional shares to such stockholders as will entitle them to whole shares (that is without fractions) such purchases or sales to be at such price or prices as shall be fixed by the Board of Directors.

Each share of stock shall be entitled to one vote upon [fol. 629] any and all matters which may at any time be submitted at any meeting of stockholders or with respect to which consents of stockholders are requested.

2. By adding to clause 3 of Article Eighth of said Certificate of Incorporation, as heretofore amended, a paragraph to read as follows:

In furtherance and not in limitation of such power, the Board of Directors of the Corporation is hereby expressly authorized, without further action by the stockholders, to refund the First Mortgage and Collateral Bonds of the Corporation issued and outstanding under that certain Indenture dated as of January 1, 1935, by and between the Corporation and Continental

Illinois National Bank and Trust Company of Chicago and Edmond B. Stofft, as Trustees, by the issuance of bonds of the Corporation in a principal amount equal to the principal amount of such First Mortgage and Collateral Bonds outstanding at the time of the issuance of such refunding bonds; to secure such refunding bonds by a mortgage or lien upon the whole or any part of the property of the Corporation; to fix the terms, conditions and provisions of such bonds and of any indenture or indentures securing such bonds, providing therein, in manner similar to said indenture securing the presently outstanding First Mortgage and Collateral Bonds of the Corporation, for the issuance, without further authorization or consent by the stockholders, of additional bonds thereunder in series, ratably secured with such refunding bonds, without limit as to amount except as limited by compliance with such restrictive provisions as shall be formulated by the Board of Directors and therein incorporated; and to confer upon the holders of bonds issuable under said indenture or indentures the option to convert such bonds into shares of Common Stock of the Corporation at such time or times and at such price or prices per share, which shall not in any event be less than $12.50 per share (that is, at the rate of eight (8) shares of [fol. 630] Common Stock, $2 par value, for each $100 principal amount of such bonds) as the Board of Directors may determine; and to sell or otherwise dispose of such bonds to such persons, firms or corporations for such consideration and upon such terms and conditions as the Board of Directors may determine. If in the judgment of the Board of Directors it is advisable so to do, it may accomplish such refunding through the issuance of debentures or other unsecured obligations in lieu of bonds as in this clause authorized, and in that event the Board of Directors may fix the terms, conditions and provisions of such debentures or other unsecured obligations and of any indenture or indentures whereunder they are issuable, incorporating therein provisions similar to those above authorized with respect to refunding bonds and the indenture or indentures securing the same, particularly including (but not exclusively) a provision conferring a like privilege upon the holders thereof of converting the same (sub-

ject to the limitation aforesaid) into Common Stock of the Corporation. It shall not be obligatory upon the Corporation, either in the issuance and sale of such bonds or debentures or other unsecured obligations as by their terms are convertible into Common Stock, or in the issuance of any shares of stock of the Corporation upon the exercise of any conversion right or privilege conferred upon the holders of such bonds or debentures or other unsecured obligations, to make any prior offer of such bonds or debentures or other unsecured obligations or shares of stock into which they are convertible to the stockholders of the Corporation or to accord to the stockholders any preemptive right or option to purchase or subscribe or to have offered to them for subscription or purchase such bonds or debentures or other unsecured obligations or shares of stock, or any part thereof."

2. That thereafter a special meeting of the stockholders of said Corporation duly called in accordance with the by-laws of said Corporation and the laws of the State of Dela- [fol. 631] ware for the consideration of such amendment was held on the 21st day of March, 1939, at 10 o'clock in the forenoon, at which meeting more than a majority of the stock of the Corporation then issued and outstanding and entitled to vote at said meeting was represented in person or by proxy and that it appears by the certificate of Jack L. Bianchi and Henry B. Pohlzon, the judges who were duly appointed by the stockholders of said Corporation at said meeting to conduct the vote of the stockholders of said Corporation for and against such proposed amendment that the persons or bodies corporate holding more than a majority of the issued and outstanding shares of the Common Stock of said Corporation, being the only class of stock of said Corporation then issued and outstanding, voted in favor of such amendment.

3. That such amendment has been duly adopted in accordance with the provisions of Section 26 of Chapter 65 of the Revised Code, as amended, of the State of Delaware and that the capital of the Corporation will not be reduced under or by reason of said amendment.

Wm. H. Wildes, President; L. J. Golden, Secretary.

Republic Natural Gas Company, Delaware, 1934.

[fol. 632] STATE OF TEXAS,
County of Dallas, ss:

Be it remembered that on this 21st day of March, 1939, personally came before me, Elizabeth Van Gordon, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn to take acknowledgment or proof of deeds, W. H. Wildes, President of Republic Natural Gas Company, a corporation of the State of Delaware, the Corporation described in the foregoing certificate, known to me personally to be such and that he, the said W. H. Wildes as such President, duly executed such certificate before me and acknowledged the said certificate to be his act and deed and made on behalf of said Corporation; that the signatures of the said President and of the Secretary of said Corporation to the foregoing certificate are in the handwriting of the said President and of the Secretary of said Corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said Corporation and that the act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the stockholders of said Corporation.

In Witness Whereof I have set my hand and seal of office the day and year aforesaid.

Elizabeth Van Gordon, Notary public in and for the County and State aforesaid.

My commission expires June 1st, 1939.

Notary Public, County of Dallas, Texas.

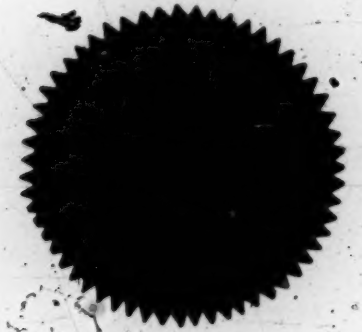
(Here follows 1 Photolithograph, side folio 633)

State of Delaware

Office of Secretary of State

I, **William J. Storey**, *Secretary of State of the State of Delaware,* do hereby certify *that the above and foregoing is a true and correct copy of* Certificate of Amendment of the "REPUBLIC NATURAL GAS COMPANY", as received and filed in this office the twenty-second day of March, A. D. 1939, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eleventh day of September in the year of our Lord one thousand nine hundred and forty-four.



William Stavely
Secretary of State

633

402A

[fol. 634] Certificate of Amendment of the Certificate of Incorporation of Republic Natural Gas Company, October 22, 1943

[fol. 635] We, Wm. H. Wildes, President, and L. J. Golden, Secretary of Republic Natural Gas Company, a corporation organized and existing under the laws of the State of Delaware, do hereby certify under the seal of said Corporation as follows:

1. That, at a meeting of the Board of Directors of said Corporation, duly held and convened, a resolution was adopted setting forth and declaring advisable the following proposed amendment to the Certificate of Incorporation of said Corporation, as amended, and calling a special meeting of the stockholders of said Corporation entitled to vote in respect thereof for the consideration of said proposed amendment, which reads as follows:

"The Certificate of Incorporation of the Corporation, as heretofore amended, is hereby amended as follows:

1. By striking out the whole of Article Fourth thereof, and substituting in lieu thereof a new Article Fourth to read as follows:

'Article Fourth: The total number of shares of Capital Stock which may be issued by the Corporation is Eight Hundred Twenty Thousand Nine Hundred Twenty-one (820,921) shares of Common Stock of the par value of Two Dollars ($2.00) per share.

'Each share of stock shall be entitled to one vote upon any and all matters which may at any time be submitted at any meeting of stockholders or with respect to which consents of stockholders are requested.'"

2. That thereafter a special meeting of the stockholders of said Corporation duly called in accordance with the by-[fol. 636] laws of said Corporation and the laws of the State of Delaware for the consideration of such amendment was held on October 5, 1943 at 2:30 o'clock in the afternoon, at which meeting more than a majority of the stock of the corporation then issued and outstanding and entitled to vote at said meeting was represented in person or by proxy and that it appears by the certificate of Jack L. Bianchi and

Roy B. Walker, the judges who were duly appointed by the stockholders of said Corporation at said meeting to conduct the vote of the stockholders of said Corporation for and against such proposed amendment that the persons or bodies corporate holding more than a majority of the issued and outstanding shares of the Common Stock of said Corporation, being the only class of stock of said Corporation then issued and outstanding, voted in favor of such amendment.

3. That such amendment has been duly adopted in accordance with the provisions of Section 26 of Chapter 65 of the Revised Code, as amended, of the State of Delaware and that the capital of the Corporation will not be reduced under or by reason of said amendment.

Wm. H. Wildes, President; L. J. Golden, Secretary.

Republic Natural Gas Company, Delaware, 1934.

[fol. 637] STATE OF TEXAS,

County of Dallas, ss:

Be it remembered that on this 22nd day of October, 1943, personally came before me, Martha Hughes, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn to take acknowledgment or proof of deeds, Wm. H. Wildes, President of Republic Natural Gas Company, a corporation of the State of Delaware, the Corporation described in the foregoing certificate, known to me personally to be such, and that he, the said Wm. H. Wildes, as such President, duly executed such certificate before me, and acknowledged the said certificate to be his act and deed and made on behalf of said Corporation; that the signatures of the said President and of the Secretary of said Corporation to the foregoing certificate are in the handwriting of the said President and of the Secretary of said Corporation respectively and that the seal affixed to said certificates is the common or corporate seal of said Corporation and that the act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the stockholders of said Corporation.

In Witness Whereof I have hereunto set my hand and seal of office the day and year aforesaid.

Martha Hughes, Notary Public in and for the County and State aforesaid.

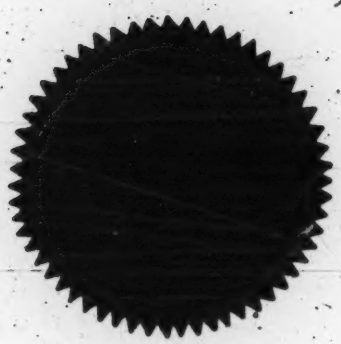
My commission expires June 1, 1945.

Notary Public, County of Dallas, Texas.

(Here follows 1 Photolithograph, side folio 638)

I, **William J. Storey**, *Secretary of State of the State of Delaware*, **do hereby certify** *that the above and foregoing is a true and correct copy of* Certificate of Amendment of the "REPUBLIC NATURAL GAS COMPANY", as received and filed in this office the twenty-fifth day of October, A. D. 1943, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eleventh day of September in the year of our Lord one thousand nine hundred and forty-four.



Harrison J. Storey
Secretary of State.

638

406A

[fol. 639] Certificate of Amendment of the Certificate of Incorporation of Republic Natural Gas Company, November 25, 1946

[fol. 640] We, Wm. H. Wildes, President, and L. J. Golden, Secretary of Republic Natural Gas Company, a Corporation organized and existing under the laws of the State of Delaware, do hereby certify under the seal of said Corporation as follows:

1. That, at a meeting of the Board of Directors of said Corporation, duly held and convened, a resolution was adopted setting forth and declaring advisable the following proposed amendment to the Certificate of Incorporation of said Corporation, as amended, and calling a special meeting of the stockholders of said Corporation entitled to vote in respect thereof for the consideration of said proposed amendment, which reads as follows:

"The Certificate of Incorporation of the Corporation, as heretofore amended, is hereby amended as follows:

1. By striking out the whole of Article Fourth thereof, and substituting in lieu thereof a new Article Fourth to read as follows:

'Article Fourth: The total number of shares of Capital Stock which may be issued by the Corporation is seven hundred twenty-five thousand four hundred fifty two (725,452) shares of Common Stock of the par value of Two Dollars ($2) per share.

'Each share of stock shall be entitled to one vote upon any and all matters which may at any time be submitted at any meeting of stockholders or with respect to which consents of stockholders are requested.'"

[fol. 641] 2. That thereafter a special meeting of the stockholders of said Corporation duly called in accordance with the bylaws of said Corporation and the laws of the State of Delaware for the consideration of such amendment was held on October 1, 1946 at 2:30 o'clock in the afternoon, at which meeting more than a majority of the stock of the Corporation then issued and outstanding and entitled to vote at said meeting was represented in person or by proxy and that it appears by the certificate of Marvin T. York and Roy B. Walker, the judges who were duly appointed by the stockholders of said Corporation at said meeting to conduct the vote of the stockholders of said Corporation for and

against such proposed amendment, that the persons or bodies corporate holding more than a majority of the issued and outstanding shares of the Common Stock of said Corporation, being the only class of stock of said Corporation then issued and outstanding, voted in favor of such amendment.

3. That such amendment has been duly adopted in accordance with the provisions of Section 26 of Chapter 65 of the Revised Code, as amended, of the State of Delaware and that the capital of the Corporation will not be reduced under or by reason of said amendment.

Republic Natural Gas Company. Delaware. 1934.
W. H. Wildes, President. L. J. Golden, Secretary.

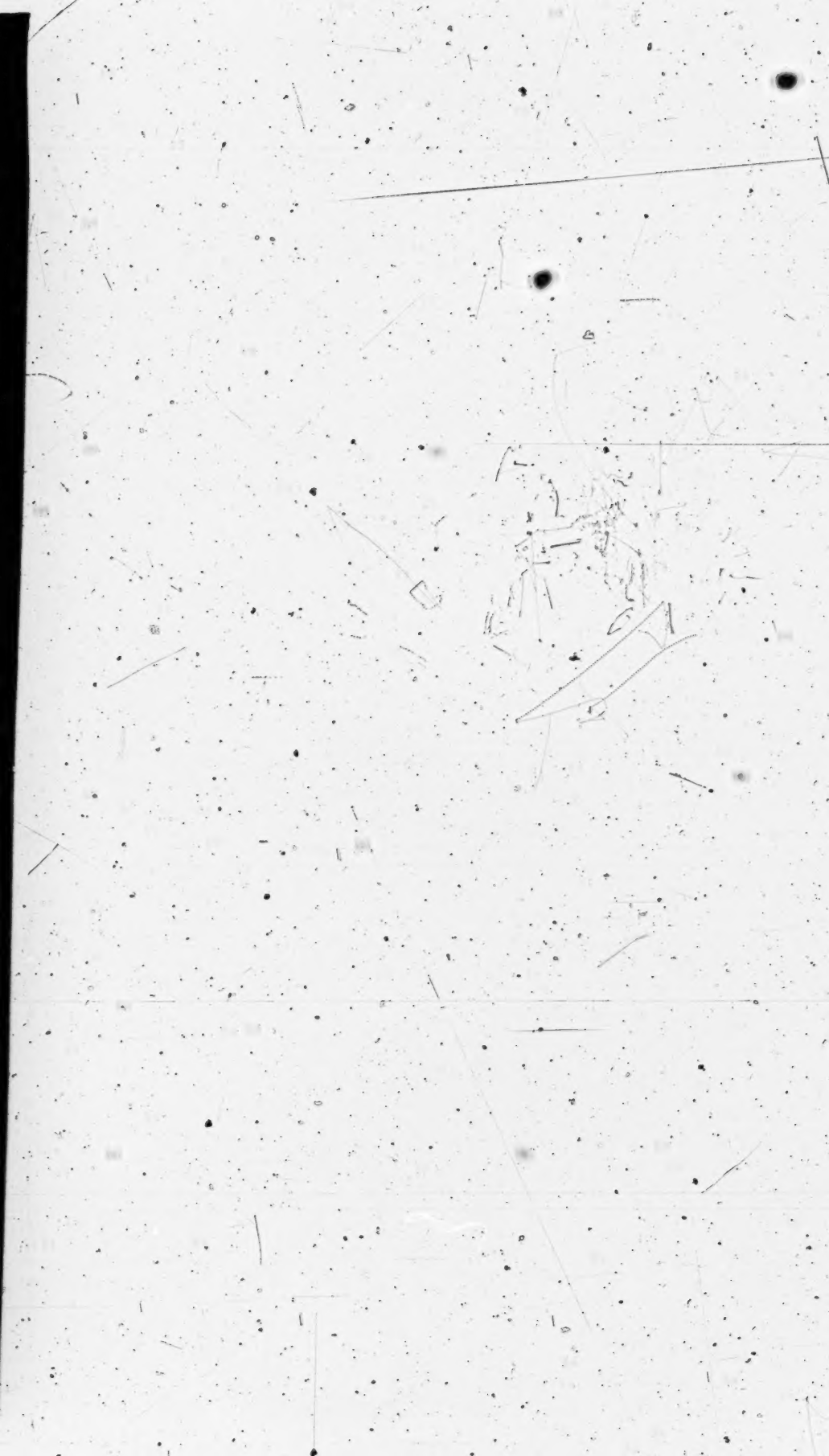
[fol. 642] STATE OF TEXAS,
County of Dallas, ss:

Be it remembered that on this 7th day of October, 1946, personally came before me, Martha Hughes, a notary public in and for the County and State aforesaid, duly commissioned and sworn to take acknowledgment or proof of deeds, Wm. H. Wildes, President of Republic Natural Gas Company, a Corporation of the State of Delaware, the Corporation described in the foregoing certificate, known to me personally to be such, and that he, the said Wm. H. Wildes, as such President, duly executed such certificate before me, and acknowledged the said certificate to be his act and deed and made on behalf of said Corporation; that the signatures of the said President and of the Secretary of said Corporation to the foregoing certificate are in the handwriting of the said President and of the Secretary of said Corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said Corporation and that the act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the stockholders of said Corporation.

In Witness Whereof I have hereunto set my hand and seal of office the day and year aforesaid.

Martha Hughes, Notary Public in and for the County and State aforesaid. My commission expires June 1, 1947. Notary Public, County of Dallas, Texas.

(Here follows 1 Photolithograph, side folio 643.)



State of Delaware

Office of Secretary of State

I, **William J. Storey**, *Secretary of State of the State of Delaware,* **do hereby certify** *that the above and foregoing is a true and correct copy of*

Certificate of Amendment of the "REPUBLIC NATURAL GAS COMPANY", as received and filed in this office the twenty-fifth day of November, A. D. 1946, at 11 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this second day of December in the year of our Lord one thousand nine hundred and forty-six.

Secretary of State

643

408A

[fol. 643a] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 902. Order No. 17463

PEERLESS OIL AND GAS COMPANY, a corporation, Applicant,

vs.

REPUBLIC NATURAL GAS COMPANY, a corporation, Respondent

REPORT OF THE COMMISSION—January 10, 1945

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 10th day of October, 1944, at 10 o'clock, A. M., on the application of Peerless Oil and Gas Company, a corporation, pursuant to order of the Commission setting the cause for hearing and notice published as required by law and personally served upon Republic Natural Gas Company, a corporation. Peerless Oil and Gas Company appearing by and through Richardson, Shartel, Cochran and Pruet, by Earl Pruet, its attorneys, and the respondent appearing by and through Foulston, Siefkin, Bartlett & Powers, by Robert C. Foulston and George Siefkin, and all parties having announced ready, applicant presented its evidence and rested, and respondent introduced its evidence and rested; and both parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Statement of the Issues

The Corporation Commission of Oklahoma is of the opinion that this cause involves the determination of the following propositions:

(1) Do the laws of the State of Oklahoma require the ratable taking and ratable production of natural gas from the wells in any gas.— in this State?

(2) If the laws do so require, is the Corporation Commission vested with power and authority to require the ratable taking and ratable production of natural gas in the various fields in this State?

(3) If the laws so require and the Corporation Commission has the power, is it its duty under the evidence

and laws to require ratable taking and/or ratable production of gas from the Hugoton Field in Texas County, Oklahoma, as between this applicant, Peerless Oil and Gas Company, and the defendant, Republic Natural Gas Company?

(4) If all of the above are found in the affirmative, then what is the best and most practicable method to be employed to arrive at ratable taking and ratable production of gas as between these two parties, taking into consideration all the facts and circumstances in this case and the correlative rights and interests of all parties, including the royalty owners owning the royalty under the leases held by each party?

[fol. 643b] Considering the first proposition, it seems to this Commission that the Oklahoma statutes do require ratable production and ratable taking of gas. This has become such an established principle that few, if any, will deny it.

In Chapter 197, Session Laws of 1915, the Oklahoma statute among other things requires:

"That whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm, or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm, or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm, or corporation securing any unfair proportion of the gas therefrom; * * * "

Prior to the enactment of said 1915 statute, the Oklahoma Legislature had passed on the same proposition, or in other words, had required not only ratable production but ratable taking.

Chapter 198, Session Laws of 1913, provides in Section 1 as follows:

"All natural gas under the surface of any land in this State is hereby declared to be and is the property

of the owners, or gas lessees, of the surface under which gas is located in its original state."

Section 2 thereof provides:

"Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, *then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas,* * * *"

From these two statutes it is clear that it was the definite intent of the Legislature that gas producers as well as gas takers in this State produce and take ratably in proportion to the other wells in the common source of supply. The language of these two statutes is so clear that they need no interpretation. However, we are not limited to these two statutes.

Chapter 99, Session Laws of 1913, defines Common Purchaser of Gas; and here it is required that there be ratable taking by any pipeline which is a common purchaser in the State.

Chapter 197, Section 5, Session Laws of 1915, requires that a common purchaser purchase and take ratably.

In addition to the common purchaser statutes, the Legislature has provided common carrier statutes which also require ratable taking of natural gas, the common carrier statute being Section 4, Chapter 99, Session Laws of 1913.

We call attention to the ratable production, ratable taking, common purchaser, and common carrier acts to emphasize the fact that the principle of ratable taking and ratable production of the great natural resources of this State gas as well as oil, has been completely and thoroughly established, not only by the laws on the statute books, but by numerous Supreme Court decisions of this State and of the United States. See Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 76 L. Ed. 725; Quinton Relief Oil and Gas Corporation v. Corporation Commission, [fol. 643c] 121 Okla. 164, 224 Pac. 156; Julian Oil and Roy-

alty Company v. Capshaw, 145 Okla. 327; H. F. Wilcox Oil and Gas Company v. State, 119 Pac. (2) 347; Oklahoma Natural Gas Corporation v. State, 161 Okla. 104, 17 Pac. (2) 448.

The principle of equitable taking and ratable production has been recognized by every order issued by the Corporation Commission of this State.

In an order issued in the case of D. M. Simmons, et al., v. Oklahoma Natural Gas Corporation, et al., Cause No. 11,111, Order No. 6518, issued by the Corporation Commission of this State in 1933, the principle was well recognized and firmly established. In a most exhaustive opinion covering in that case principally ratable taking by common purchasers, this Commission stated as follows:

> "That proration or equitable taking has been established as a valid legal concept, permits of no doubt. The courts have held that the police power of the State extends to encompass the conservation of its natural resources, and that reasonable measures may be taken to accomplish that end."

In the same order the Commission also established the well-recognized principle that common carriers and common purchasers are only a part of the general scheme to require ratable taking of natural gas in this State. On this subject the Commission stated as follows:

> "The principle involving common purchasers is intimately bound up with, and an integral part of, proration or equitable taking."

It is therefore clear that all of the statutes above referred to are an integral part and irrevocably bound up in the general proposition of ratable taking. And the statutes were passed so that this principle could never be abrogated. Common purchasers and common carriers must take ratably; but not only common purchasers and common carriers. Anyone who takes or produces oil or gas in this State must take and produce ratably.

There are many provisions in our statutes requiring the protection of correlative rights; and this likewise is an integral part of ratable taking. Without the principle of ratable taking there could be no protection of correlative rights in the production of oil or gas.

It may be argued by some that ratable taking and production has been fully established as to oil, but that gas is an entirely different matter and needs a different application.

It will be observed that in the year 1915 Oklahoma passed two statutes, one pertaining to oil and one pertaining to gas, and insofar as the provisions of ratable taking are concerned, they are almost identical. An examination of the two statutes will show that the Legislature had in mind the absolute requirement that ratable taking should apply to both equally.

This principle has always been recognized by the Corporation Commission and by the courts. In the Simmons v. Oklahoma Natural Gas Corporation case, supra, this particular proposition in 1933 was thoroughly considered. In citing cases on ratable taking, the Commission calls attention to the fact that:

> "This case established the validity of the principle of proration or equitable taking, embodied in Session Laws of 1915, Chapter 25, relating to crude oil, which is a companion statute to Session Laws 1915, Chapter 197, relating to natural gas. The principle involved in the two statutes is exactly the same, although one deals with proration of natural gas, and the other with proration of crude oil."

Then in referring to the Champlin case, it is stated:

> "The same principles of constitutional construction applicable to the equitable taking of oil, established by the Champlin and Julian cases, apply equally to the establishment of equitable taking relative to natural gas."

[fol. 643-d] This case before the Corporation Commission was unappealed and has been followed in numerous cases, and recognized by the courts and the Corporation Commission generally.

There seems to be no question but that the court decisions and orders of the Corporation Commission are unanimous that ratable taking of natural gas in the State of Oklahoma is firmly established as a principle of law as well as justice.

Considering proposition (2), Does the Corporation Commission have power to require ratable taking?—we are of the opinion that this is likewise generally recognized and

understood, and is specifically provided for by statute. Referring again to Chapter 198, Session Laws of 1913, where the Corporation Commission was given certain powers over the provisions of the Act, after requiring ratable taking both as to price and amount, Section 3 of said Act provides:

> "Any person, firm, or corporation * * * shall take ratably from each owner of the gas in proportion to his interest in said gas, *upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing;* * * *."*

It will be observed that in the 1913 law the Corporation Commission was given power to fix the terms of the ratable taking of gas, not only as to the price of the gas, if there was a disagreement, but also as to the other terms under which it should be taken. This statute has never been directly interpreted by any court, but its language seems clear that the Corporation Commission has the power to fix the terms. As stated above, it is a statute requiring ratable production of gas. It in no way pertains to the market demand, to common purchaser, or common carrier, but it is a statute requiring ratable taking of gas in a gas field, and gives the Corporation Commission, among other things, the power to fix the terms. Certainly this would include the power to require ratable taking.

But on this proposition we do not rely upon the 1913 law only. Under the 1915 law there can certainly be no question as to the power of the Commission to require ratable taking. In addition to the provisions above set *set* out, Chapter 197, Session Laws of 1915, Section 4, provides as follows:

> "The said Commission (Corporation Commission) is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, *and to regulate the taking of natural gas from any or all such common sources of supply within the State, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom,* * * *."*

Section 8 of the same Act provides as follows:

> "That the Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this Act."

It therefore appears that the 1915 law not only gives specific authority to the Corporation Commission to prescribe rules and regulations to protect "all those having a right to produce therefrom", but the Legislature emphasized the authority by giving it power to make any rule or regulation necessary to enforce the provisions of the Act. Certainly one of the provisions of the Act was the requirement that there should be ratable taking in every common source of supply.

Considering proposition (3)—Is it the duty of the Commission to enforce ratable production as between Peerless Oil and Gas Company and Republic Natural Gas Company? —this question involves all the equities connected with the case.

[fol. 643e] A review of the testimony and of the history of the field is important in order to fully establish the proper equities between these parties.

The Hugoton Gas Field is one of the largest gas fields in the United States. It covers a vast area in Oklahoma and a much larger area in Kansas, and no doubt extends into the State of Texas. The testimony shows that its estimated reserves run into many trillions of cubic feet of gas. Some believe that there will be enough gas in that field to furnish the entire United States for years to come. The field was discovered in 1924 or 1925, but little development took place in the Oklahoma portion because of lack of market. Kansas developed its market much in advance of Oklahoma, but Oklahoma had no particular market until about 1937.

Republic Natural Gas Company, respondent in this case, was the first major producer to drill wells of any consequence in the field in the State of Oklahoma. It drilled several wells, having a connection with another pipeline in the State of Kansas, where the gas was sold to be transported and distributed by the other company.

All of the laws, rules and regulations above mentioned, including the court decisions and the general policy and established principle of ratable production and ratable taking, were in force and effect at that time, and had been for many years prior to the time the Republic entered this State. It was fully familiar with all of the principles hereinabove enunciated at the time it entered the State of Oklahoma—the common purchaser and common carrier and ratable production and ratable taking statutes, requiring ratable production and ratable taking from producers and takers, whether or not they were common purchasers. Not only did Republic Natural Gas Company have knowledge of the laws, rules, and regulations, and decisions of the Supreme Court of the State of Oklahoma concerning ratable taking, but the company was specifically told by the Honorable Wm. J. Armstrong, then Conservation Officer and now a member of this Commission, that if it entered the State of Oklahoma to drill gas wells, it would be required to produce and take gas from its wells ratably with the other wells in the common source of supply.

The State of Oklahoma is indebted to the Republic Natural Gas Company for its development in this State. We appreciate the fact that the Republic was a pioneer in the development of this great gas field which means so much to this State and especially to the citizens of Texas County; but it should not be heard to complain if it is required to abide by the laws of this State with which it was entirely familiar and about which it was duly notified at the time it entered the State.

The Republic claims in this case to be a producer of gas and not a common purchaser or common carrier. Assuming for the sake of argument that it is not a common purchaser or common carrier, the record in this case shows that it drilled 26 or 27 wells in the Hugoton Field in Texas County, Oklahoma; that it constructed pipelines leading to all of those wells and a main pipeline extending 25 or 30 miles across the State line to a connection near Hugoton, Kansas, where it sold the gas produced from its wells in Oklahoma to the Northern Natural Gas Company at a price of six cents for which it paid the royalty owners on its leases in Oklahoma five cents; that this manner of operation continued until about a year ago when the Cities Service Gas Company built a pipeline into Texas County and Republic made arrangements with it to sell part of its gas to said

Cities Service Company. Republic has also made arrangements with other operators in the field for purchase and exchange of gas to be taken by Cities Service or Northern Natural in Kansas.

Though this extended pipeline system of the Republic may be determined to be a gathering system; it has more of the elements of a pipeline system; and it should apparently be controlled by the laws governing pipelines rather than gathering system; but as indicated above, in this case this is rather immaterial. One of the pipelines, or a part of its gathering system, runs across the land owned by the Peerless Company on which its well is drilled. The Republic Company has several wells on adjoining leases which, according to the testimony in this case, have been and are draining the gas from the Peerless lease. The Peerless has only one lease of 640 acres and one well. All of the Republic wells and the Peerless well are drilled on 640-acre spacing unit; and each and all of said wells have complied [fol. 643f] in substance with the orders of the Corporation Commission heretofore issued, taking into consideration acreage in the Hugoton Field; and it is now definite and recognized that ratable taking and ratable production should be based upon the capacity of the well, or the deliverability of the well, taking into consideration acreage, which in that field is determined to be 640 acres to a well. This rule of the Commission was established on May 5, 1943, and has been in force and effect since that date, although absolute compliance therewith has not been required.

It is evident from all the facts and circumstances in this case that if the Peerless Company is to be allowed to produce gas from its well, this gas must be by it transported fifteen to thirty miles, unless said gas is transported or disposed of by the Republic Natural Gas Company.

It would be impractical from a financial standpoint to construct a pipeline to any city or other market outlet that would take sufficient gas to justify the production of this well; and it would be impossible to economically operate the well under present conditions existing in that field unless the gas is taken into the pipeline of the Republic Natural Gas Company.

Considering all the facts and circumstances, it seems clear to this Commission that there should be a ratable production and a ratable taking of natural gas from the

well owned by the Peerless Oil and Gas Company in proportion to those owned by the Republic Company, in order to protect the interests of both parties, in order to prevent drainage, and in order to carry out the provisions of the statutes hereinabove mentioned.

The last and final question to be determined is how to effect ratable taking between these parties and comply with the laws of this State, to be fair and equitable as between the parties and protect the interests of the royalty owners in the leases owned by each. The practical means of accomplishing this is difficult, and is a matter that this Commission should never be called upon to solve.

From the record in this case it appears that both the Peerless and the Republic Companies have engaged in the production of gas for many years and are competent and efficient in that business; and they are in much better position to determine the practical methods of effecting ratable taking than is the Corporation Commission; but from the record it appears that there is not ratable production or ratable taking of gas as between the Peerless and Republic Companies. It seems admitted by both sides that the Peerless Company has a gas well and is not producing any gas therefrom; and that the Republic Company has several offsetting gas wells that are draining gas from the Peerless lease, and that the Republic is producing gas now, and has been at all times since the well of the Peerless was completed, and for many months prior thereto.

It further appears that Peerless Oil and Gas Company offers to build a connection from its well and attach the same to the Republic line, if the Republic will take and dispose of the gas and pay therefor, either by letting Peerless share in the Republic market, or by delivering the Peerless gas to some purchaser who will buy the same. All of these facts seem to be admitted, but the Republic refuses to purchase the gas from the Peerless. Republic offers to transport the Peerless gas if market can be obtained by the Peerless, but Republic refuses to lease any of its present connections or to waive any of the gas that it now has under contract in order that Peerless may dispose of its gas and thereby effect ratable taking in said field.

Under these conditions the Commission has before it several propositions for enforcing the laws on ratable taking. It is the intention of any law that the most practical method be employed for its enforcement; and where there is a pro-

vision in the law for its enforcement, it is recognized that the power to enforce carries with it the necessary incidentals thereto.

Since the law requires ratable taking and ratable production, and assuming for the time being that Republic is neither a common purchaser nor common carrier, the Commission might issue an order under the 1915 law requiring all wells to produce ratably, directing its Conservation Officer to see that no well produces more than another well. Under the present conditions this would cause the shutting [fol. 643g] down of all wells in said field, especially the wells of the Republic Natural Gas Company. This would be ratable taking because there would be no taking until an arrangement was made whereby all wells could be produced on a ratable basis. This seems to the Commission an unreasonable, inequitable and unjust manner of approach to a problem of obtaining ratable taking. It would be a harsh measure and would deprive many innocent persons of their right to the use of this valuable natural resource.

It therefore appears to the Commission in this case that to secure ratable production as between the Peerless and the Republic, the Republic Company should be required to make a connection with its pipeline at some point near the Peerless well and allow the Peerless gas to enter the Republic pipeline, and pay the Peerless Company for the gas.

Under all the facts in this case, this seems to be the most fair, equitable, and just manner of enforcing the ratable taking and ratable production laws of this State, and the Commission should issue an order accordingly. If the price for the gas or the manner of taking cannot be agreed upon between the parties, this matter should be determined at a hearing at the request of either party, but in the meantime a connection should be made on the Republic line.

Now, on this 10th day of January, 1945, the Commission, having considered the matter in conference and being well and sufficiently advised in the premises, is of the opinion that the application should be granted to the following extent, and finds as follows:

Findings

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has

jurisdiction of the subject-matter embraced in said application and of the parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. That Republic Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

4. That Peerless Oil and Gas Company is the owner of various valid and subsisting oil and gas leases covering property located and situated in the Hugoton Oklahoma Gas Field, including oil and gas lease dated December 31, 1936, executed by The Central Life Assurance Society (Mutual) in favor of W. E. Benson, which lease covers the West Half (W½) and Southeast Quarter (SE¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma; said lease having been introduced in evidence as applicant's Exhibit 55 and made a part hereof by reference.

5. That Peerless Oil and Gas Company is also the owner of a valid and subsisting oil and gas lease covering the Northeast Quarter (NE¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma, dated November 13, 1937, executed by J. V. Blankenship, Cuba Blankenship and Anna M. Cuthbert in favor of W. E. Benson; that J. V. Blankenship owns the minerals lying in and under said tract of land.

6. That as provided by law and the regulations of the Corporation Commission, Peerless Oil and Gas Company filed with the Corporation Commission of Oklahoma notice of its intention to drill a well in said section.

7. That Peerless Oil and Gas Company has drilled a well for the production of gas located in the Southwest Quarter [fol. 643h] (SW¼) of the above described section at a point near the approximate center thereof, which said well was completed, equipped, and ready for production on the 28th day of April, 1944.

8. That Republic Natural Gas Company, respondent herein, is the owner of various gas wells from which it is

now and has been for a considerable length of time producing gas from the natural reservoir into which said well owned by Peerless Oil and Gas Company has been drilled, said wells so owned by Republic Natural Gas Company including the following described wells:

Republic Natural Gas Company's Bunger No. 1 Well, located in Section 13, Township 6 North, Range 15 East, immediately offsetting the Peerless Well on the East;

Republic Natural Gas Company's Blackmer No. 1 Well, located in Section 15, Township 6 North, Range 15 East, directly offsetting the Peerless Well on the West;

Republic Natural Gas Company's Judd No. 1 Well, located in Section 24, Township 6 North, Range 15 East, diagonally offsetting the Peerless Well to the southeast thereof;

Republic Natural Gas Company's Cope Well, located in Section 18, Township 6 North, Range 16 East C. M.;

Republic Natural Gas Company's Dullahan Well, located in Section 21, Township 6 North, Range 15 East C. M.;

Republic Natural Gas Company's Jackson Well, located in Section 16, Township 6 North, Range 15 East C. M.;

All in Texas County, Oklahoma;

Republic Natural Gas Company's Hamilton Well, located in Section 15, Township 35 South, Range 38 West; and

Republic Natural Gas Company's Mitchell Well, located in Section 18, Township 35 South, Range 37 West.

In the State of Kansas.

9. In producing natural gas from its said wells located in the Hugoton Oklahoma Gas Field Republic Natural Gas Company has been, for a considerable period of time, draining natural gas from underneath said Section 14 above described; said drainage having been continuous from the date of completion of each of said Republic Natural Gas Company's wells to the present date, and each of said wells, and other wells owned by Republic Natural Gas Company in the Hugoton Oklahoma Gas Field, have drained gas from underneath said Section 14 since the date of the completion

of the Peerless Oil and Gas Company's well on the 28th day of April, 1944; that there has been material drainage from underneath said Section 14, practically all of which has been caused by Republic Natural Gas Company's wells; that the original virgin pressure of the Hugoton Field is approximately 430 pounds; that the reduction of the pressure in the Republic Natural Gas Company's wells from date of completion of same to date, the recoverable gas originally situated under each of the sections involved, and the amount of gas produced from each of Republic's wells, shows that each well has produced quantities of gas greatly in excess of that which the present gas pressure of each well indicates has been taken from underneath each section involved, thus indicating that a great portion of the gas produced from each of Republic's wells has come from sources other than from the producing horizon underlying the section into which wells owned and operated by Republic have been drilled.

10. That each and all of the wells owned by the Republic Natural Gas Company above described and other wells owned by said company in the Hugoton Gas Field are drilled into the same common source of supply or reservoir of gas into which the Peerless well hereinabove described has been drilled, and have been producing and taking natural gas from such common source of supply or reservoir of gas.

[fol. 643i] 11. That the production of natural gas in the Hugoton Gas Field is in excess of the market demand.

12. That Republic Natural Gas Company is now and has been engaged in the transportation of natural gas for compensation, hire, and otherwise, and is a common carrier of natural gas within the meaning of the statutes of the State of Oklahoma.

13. That Republic Natural Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Hugoton Oklahoma Gas Field, and is a common purchaser within the meaning of the statutes of the State of Oklahoma defining common purchasers.

14. That the Republic Natural Gas Company is now and has been at all times involved herein engaged in using the highways of the State of Oklahoma for the purpose of laying

natural gas pipe lines for the purpose of transporting natural gas.

15. That Republic Natural Gas Company, a corporation, respondent herein, is now and has been at all times involved herein engaged in taking gas from a gas field, to-wit, the Hugoton Oklahoma Gas Field, and transports the same into the State of Kansas and there delivers same to the Northern Natural Gas Company, and that in so doing Republic Natural Gas Company, respondent herein, is not taking gas for the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

16. That the sole business and operations of Peerless Oil and Gas Company in the Hugoton Oklahoma Gas Fiels is that it owns oil and gas leases covering considerable acreage in said field and has, pursuant to said leases, drilled several wells in said field, including the well above described and referred to.

17. That Republic Natural Gas Company maintains and operates a pipeline for the transportation of natural gas in said Hugoton Oklahoma Gas Field which said pipeline crosses said Section 14 into which the well owned by Peerless Oil and Gas Company has been drilled.

18. That respondent, Republic Natural Gas Company, was incorporated, among other things, for the following purposes:

> To purchase, produce, refine, sell and distribute natural gas, * * * to buy, sell, or otherwise dispose of, and manufacture all kinds of illuminating, burning and heating oils, and gasoline, naphtha, lubricants, greases, waxes, and all other products and by-products of petroleum * * *;
>
> To mine for, produce, buy, acquire, use, sell and distribute natural gas for light, heat, power, and other purposes, and also to produce, acquire, use, sell, and distribute the by-products and residual products therefrom, and to construct or in any manner acquire, maintain, operate, encumber, sell, or in any manner dispose of works therefor * * *;
>
> To store, transport, buy and sell oil, gas, salt, brine and other mineral solution * * * to manufacture, acquire, distribute, use, and sell artificial gas for light,

heat, power, and other purposes, and to produce, acquire, use, sell and distribute the by-products and residual products therefrom, and to construct or in any manner acquire, maintain, operate, encumber, sell, or in any manner dispose of works therefor * * *;

To engage in the business of acquiring by purchase, lease or otherwise, constructing, holding, owning, managing, operating, and leasing, selling, or otherwise disposing of, electric power systems and plants, any and all businesses, factories, plants, workshops, stores, and warehouses allied thereto and connected therewith, [fol. 643j] * * * to construct, lay, purchase, or in any manner acquire, and to maintain and operate, and to sell, encumber, or in any manner dispose of, pipelines, gas mains, plants, systems, and works for use, sale, distribution and transportation of oil, natural, artificial and mixed gas for light, heat, power and other purposes in, over, through or under any streets, alleys, roads, highways, or other public places, or in, over, through or under any private or public property * * *.

That said respondent qualified to do business in the State of Oklahoma on the 5th day of October, 1938, and accepted and agreed to comply with the laws of the State of Oklahoma governing its operations thereafter.

That said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to ratable taking of natural gas, with full knowledge of the fact that the Corporation Commission of the State of Oklahoma had entered numerous orders requiring ratable taking of gas and subsequent to and with full knowledge of the decision of the Supreme Court of the State of Oklahoma in the case of Oklahoma Natural Gas Company v. State, 161 Okla. 104, 17 Pac. (2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

That said respondent so qualified to do business in the State of Oklahoma after having been instructed by Wm. J. Armstrong, then Conservation Officer of the Corporation Commission of the State of Oklahoma, now a member of the Commission, that it would be required under the laws of Oklahoma to take gas ratably. In the trial of the within application the following transpired:

Cross-Examination by Mr. Pruet: (Referring to previous hearing in connection with the Hugoton Oklahoma Gas Field.)

"Q. I will ask you if Commissioner Armstrong didn't ask you this further question, and if you didn't make this further answer:

'Q. It has always been the understanding between your company and the respresentaives of the Corporation Commission as you moved into Oklahoma, that there was a ratable taking law in this State?

'A. Yes.'

"A. Yes, sir."

(Testimony of Alfred Hurlburt, Vice-president of respondent.)

19. That the operations of the respondent, Republic Natural Gas Company, constitute it a transporter of natural gas.

20. That the operations of respondent, Republic Natural Gas Company, constitute it a common carrier of natural gas.

21. That the operations of respondent, Republic Natural Gas Company, constitute it a common purchaser of natural gas.

22. That in the event it should finally be determined by the Supreme Court of the State of Oklahoma that Republic Natural Gas Company is not a common purchaser of natural gas, and is not a common carrier of natural gas, within the meaning of the statutes of the State of Oklahoma, nevertheless Republic Natural Gas Company should be required to take natural gas from said Peerless Oil and Gas Company's well in said Section 14 for the following reasons:

Republic Natural Gas Company, a corporation, is now and at all times involved herein, has been engaged in taking gas from a gas field, to-wit: the Hugoton Oklahoma Gas Field, and transports same into the State of Kansas, and there delivers same to the Northern Natural Gas Company, [fol. 643k] and in so doing Republic Natural Gas Company is not taking gas for the purpose of developing a gas and oil field, or operating oil wells, or for the purpose of its own domestic use; and in so doing Republic Natural Gas Company is taking more than its proportionate share of the natural gas from said field; is draining natural gas from

underneath the reserves of another in said field, to-wit: Peerless Oil and Gas Company, applicant herein; is preventing Peerless Oil and Gas Company from taking its proportionate share of the natural gas from said field, in which said field production is in excess of the market demand.

23. That Peerless Oil and Gas Company has made a proper tender of natural gas producible from its said well drilled in Section 14 as aforesaid, to Republic Natural Gas Company, but Republic Natural Gas Company, respondent herein, refuses to take gas ratably from applicant's well drilled in said Section 14 as aforesaid, although requested so to do, and further refuses to permit complainant to make connections necessary to enable respondent, Republic Natural Gas Company, to take gas from the above well, and respondent has given no legal reason or excuse for so refusing.

24. That the respondent should be required to take gas ratably from Peerless Oil and Gas Company's Crump No. 1 well, located in Section 14 aforesaid, for the following reasons and purposes, any one of which is sufficient:

(a) Respondent is a common purchaser of natural gas in the field involved.

(b) Republic Natural Gas Company is a common carrier of natural gas in said field.

(c) Republic Natural Gas Company is a transporter of natural gas in said field.

(d) Republic Natural Gas Company is taking and will continue to take more than its proportionate part of the natural gas in said field unless required to take ratably from said well of Peerless Oil and Gas Company.

(e) Republic Natural Gas Company is draining gas from underneath said Section 14 into which said Peerless Oil and Gas Company's well has been drilled, and will continue to drain gas from underneath said Section 14 until all the gas thereunder has been drained and Peerless Oil and Gas Company will be prevented from taking its proportionate share of the natural gas in the field unless Republic Natural Gas Company is required to take gas ratably from said Peerless Oil and Gas Company's well.

(f) Production in said field is in excess of market demand and Republic Nafural Gas Company should be required to

take ratably from said well in order to prevent waste, protect correlative rights, and prevent unreasonable drainage from the reserves of others.

25. That in draining natural gas from underneath said Section 14 the Republic Natural Gas Company, respondent herein, is now and has been since April 28, 1944, taking property of and belonging to Peerless Oil and Gas Company, a corporation, without compensation, without its consent, in direct violation of Sections 23 and 24, Article 2 of the Constitution of Oklahoma and the Fifth Amendment to the Constitution of the United States, and without due process of law, in violation of the Constitution of Oklahoma and of the Fifth and Fourteenth Amendments to the Constitution of the United States of America, and will continue to do so unless required to take ratably in accordance with the application herein made.

26. That this application should be granted to the extent hereinafter set forth, all matters not being herein determined being hereby reserved by the Commission.

[fol. 6431] ORDER

It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Crump No. 1 well, located in the Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose.

Done and Performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 10th day of January, 1945.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; —— Commissioner. (Seal.)

Attest: Tom Mc Murray, Secretary.

[fol. 644] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

PROCEEDINGS HAD AND DONE ON JANY. 11TH, 1945, ON NOTICE OF APPEAL AND FIXING OF SUPERSEDEAS BOND

Appearances: Mr. George Green for the Respondent, Mr. Floyd Green for the Commission.

Mr. George Green: If the Commission please, in C.D. 902, Peerless Oil and Gas Company against the Republic Natural Gas Company, the Republic Natural Gas desires at this time to file notice of appeal in open court and asks that the Commission fix the amount of supersedeas. In this connection, Mr. Floyd Green and I conferred yesterday about the supersedeas and he suggested that I see Mr. Pruet,—we probably could agree on a supersedeas but I find that Mr. Pruet is out of the City and will not be back for ten or fifteen days and therefore I would suggest that the Commission make some [fol. 645] expression in regard to supersedeas so we may

comply with it and the Order set aside until an appeal is perfected.

Chairman Bond: The Commission would be slow to fix a supersedeas without giving the other side an opportunity to introduce whatever they may desire.

Mr. George Green: The Commission has always got jurisdiction, if the surety is insufficient, to increase it. If you do not desire to fix a supersedeas at this time, the proceeding should be stayed for a period of thirty days for us to give a supersedeas.

Mr. Floyd Green: Mr. Pruet called me yesterday afternoon from Tulsa—called the office, maybe it was between trains.

Mr. George Green: I called his office yesterday and they told me he was out of town. I called today and asked where he was and they said he was on his way to Washington and wouldn't be back for ten or fifteen days.

Mr. Floyd Green: Let's set this for further hearing some time next week. I am reluctant to suggest anything in his absence,—I don't know what the supersedeas would be.

(At this time some discussion off the record.)

[fol. 646] Mr. George Green: I think the Court should allow this motion. Your Honor please, you are making an Order on this notice of appeal—I have filed one in writing.

Chairman Bond: Let the record show, Notice for appeal was filed in open court this morning and supersedeas asked for and the Commission sets the hearing for fixing supersedeas on the 25th of January, at ten o'clock A. M.

[fol. 647] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL—Filed January 11, 1945

Comes now Republic Natural Gas Company, respondent in the above entitled action, and files herewith in open court notice of its intention to appeal to the Supreme Court of Oklahoma from the order, judgment and decree rendered herein on the 10th day of January, 1945, in favor of the ap-

plicant, The Peerless Oil and Gas Company, a corporation, and against the respondent, and requests that this notice be entered on the trial docket of this court as provided by law.

Dated this 10th day of January, 1945.

Robert C. Foulston, George Siefkin, of Wichita, Kansas; Ross Rizley, of Guymon, Oklahoma, and Rainey, Flynn, Green & Anderson, of Oklahoma City, Oklahoma, by Geo. M. Green, Attorneys for Respondent.

[fol. 648] [File endorsement omitted.]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER SETTING APPLICATION TO FIX SUPERSEDEAS BOND FOR HEARING—Filed January 18, 1945

Now on this 11th day of January, 1945, the Corporation Commission being in session in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, George M. Green, Attorney for respondent Republic Natural Gas Company, asks this Commission to fix supersedeas bond in the above styled cause; and attorney for applicant being absent from the city, the Commission is of the opinion that the matter should be set down for hearing so that all interested parties may have opportunity to be present and be heard. [fols. 649-650] It appears that the 25th day of January, 1945, is open on the docket, and that the matter may be heard on that date.

Order

It is therefore ordered by the Corporation Commission that the application of the respondent herein for an order fixing the amount and terms of supersedeas bond in this cause be, and same is hereby, set for hearing on the 25th day of January, 1945, at 10 o'clock a.m., in the Commission Court room in the Capitol Office Building, Oklahoma City, Oklahoma.

Done and performed by the Corporation Commission this 18th day of January, 1945.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner. (Seal.)

Attest: Tom McMurray, Secretary.

[File endorsement omitted.]

[fol. 651] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

JOURNAL ENTRY—Filed January 25, 1945

Now on this 25th day of January, 1945, it appearing to the Commission that the Republic Natural Gas Company, respondent in the above styled and numbered cause, having given notice in open court of *is* intention to appeal from the order of the Commission herein of January 10, 1945, being order No. 17463, and also in writing having advised the Commission that it is appealing from said order to the Supreme Court of Oklahoma, and having requested this Commission to certify the entire record in this cause to the Supreme Court of Oklahoma as required by law.

Now, therefore, it is ordered by this Commission that said appeal be granted; that the order of the Commission be superseded and the enforcement thereof suspended during the pendency of the appeal to the Supreme Court of Oklahoma, upon the Republic Natural Gas Company filing within ten days a bond in the usm of $25,000 to the State of Oklahoma for the benefit of Peerless Oil and Gas Company, said bond to be approved by the Commission, and [fol. 652] that the Secretary of the Commission cause the entire record in this cause to be transcribed and submitted to the Chairman of the Commission for certification at the earliest possible date.

Done at the office of the Corporation Commission, Capitol Office Building, Oklahoma City, Oklahoma, this 25th day of January, 1945.

Corporation Commission of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; Wm. J. Armstrong, Commissioner. (Seal.)

Attest: Tom McMurray.

O. K. Earl Pruet.

[File endorsement omitted.]

[fol. 653] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

NOTICE OF APPEAL—Filed January 25, 1945

Comes now the respondent, Republic Natural Gas Company, having heretofore in open court given notice of its intention to appeal and hereby appeals from the order of the Commission herein of January 10, 1945, being order No. 17463 in the above styled and numbered cause, and does hereby request that the entire record in this cause be certified to the Supreme Court of Oklahoma as required by law, and that the order of the Commission be superseded and suspended pending said appeal upon this respondent giving a bond to the State of Oklahoma for the benefit of the Peerless Oil and Gas Company, in such sum as shall be designated by this Commission.

[fol. 654] Foulston, Siefkin, Bartlett & Powers; Rainey, Flynn, Green & Anderson, Attorneys for respondent.

[File endorsement omitted.]

[fol. 655] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

[Title omitted]

SUPERSEDEAS OR SUSPENDING BOND—Filed January 25, 1945

Know All Men by These Presents:

That the Republic Natural Gas Company, principal obligor, and the Fidelity and Casualty Company of New York, as surety are held and firmly bound unto the State of Oklahoma, for the benefit of the Peerless Oil and Gas Company, plaintiff in the above styled cause, in the sum of Twenty-five Thousand and no/100ths Dollars ($25,000.00) for the payment of which well and truly to be made, we and each of us do hereby jointly and severally bind ourselves, our successors and assigns.

Dated this 23rd day of January, 1945.

The condition of the foregoing obligation is such that whereas on the 10th day of January, 1945, Order No. 17463 [fol. 656] of the Corporation Commission of the State of Oklahoma in cause CD No. 902, styled Peerless Oil and Gas Company, a corporation, Applicant, vs. Republic Natural Gas Company, a corporation, Respondent, was rendered in favor of the applicant and against the respondent, Republic Natural Gas Company, which order is in words and figures as follows, to-wit:

1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Crump No. 1 well, located in the Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East, C. M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable de-

lay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field;

[fol. 657] 2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose. and

Whereas said Republic Natural Gas Company has taken an appeal from said order of the Corporation Commission of the State of Oklahoma to the Supreme Court of the State of Oklahoma.

Now, Therefore, we, Republic Natural Gas Company, as principal obligor, and the Fidelity and Casualty Company of New York, as surety, hereby undertake in the sum of $25,000.00 that the respondent, Republic Natural Gas Company, shall pay to the State of Oklahoma for the benefit of the Peerless Oil and Gas Company, any damages it may sustain by reason of the suspension of the aforesaid order No. 17,463 in Cause CD No. 902 of the Corporation Commission of the State of Oklahoma, if the same shall be finally affirmed.

[fol. 658] Republic Natural Gas Company, by Alfred Hurlburt, Its Vice President, Principal; The Fidelity and Casualty Company of New York, by Don H. Houseman, Its Attorney, Surety. (Seal of Republic Natural Gas Company.)

Countersigned by T. Roy Billips, Jr., Resident Agent, State of Oklahoma.

OK. Earl Pruet.

[fols. 659-716] Chairman's Certificate to foregoing transcript omitted in printing.

[fol. 717] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION FOR ORAL ARGUMENT—Filed June 4, 1945

Comes now Republic Natural Gas Company, Plaintiff in error herein, and respectfully requests permission to orally argue this cause and as grounds therefor says:

There is involved in this appeal the validity of an order of the Corporation Commission of the State of Oklahoma requiring plaintiff in error, a producer only of natural gas in the Hugoton Oklahoma Gas Field, to connect with the gas well of and purchase gas from another producer in the same field. The fundamental issues are:

(A) Whether the statutes of Oklahoma authorize the Commission to make the order; and

(B) Whether the order of the Commission denies plaintiff in error the equal protection of the laws and deprives it of its property without due process of law, in violation of the State and Federal Constitutions, plaintiff in error contending that the order and any statute of Oklahoma that may be construed as authorizing the making of said order are null and void.

The case therefore presents important questions on the construction and interpretation of the conservation laws of the State, and also very serious and important questions arising under both the State and Federal Constitutions. [fols. 718-804] Some of these important questions have never been directly passed upon by this court under facts as shown by the record herein. Therefore, we believe an oral argument would be helpful to the court in arriving at a correct solution of the issues presented on the appeal.

Wherefore plaintiff in error prays that oral argument be granted and this cause set for hearing at such time as may suit the convenience of this court.

Respectfully submitted, Rainey, Flynn, Green and Anderson. Robert C. Foulston and George Siefkin, Attorneys for Plaintiff in Error.

We join in the request and service of the above and foregoing motion for oral argument accepted by me this 1st day of June, 1945.

Earl Pruet, Attorney for Defendant in Error, Peerless Oil and Gas Company; Randell S. Cobb by Floyd Green, Attorney General of the State of Oklahoma; Floyd Green, Attorney for the Corporation Commission of the State of Oklahoma.

[fol. 805] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION TO DISMISS APPEAL—Filed December 22, 1945

Comes now Peerless Oil and Gas Company, a corporation, applicant below, defendant in error herein, and moves the Court to dismiss the appeal of the Republic Natural Gas Company, a corporation, on file herein, and as grounds of said motion states:

1

The plaintiff in error has abandoned its appeal herein and waived its right to prosecute the appeal herein for the reason that it has, since the filing of the appeal herein, taken a position before the Corporation Commission of the State of Oklahoma inconsistent with its position taken on appeal herein and has elected to seek, and has sought, the advantages of and recognized the validity of the statutes of this state and the basic orders of the Commission, upon which the order involved herein is based. Attached hereto marked Exhibit 1 and made a part hereof is a tender of natural gas made by the Republic Natural Gas Company [fol. 806] to Cabot-Carbon Company, a corporation. By making said tender the Republic Natural Gas Company, plaintiff in error herein, admits the validity of and seeks to obtain the benefits of the statutes of the State of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, to-wit: Order #16377 in cause CD 817; Order #17410 in cause CD #861; Order #17867 in Cause CD #983, and Order #17359

in Cause CD #914, for the reason that said orders prescribe the manner of the making of tender of natural gas for the purpose of obtaining an allowable for an unconnected well and as a necessary condition precedent to making application to the Corporation Commission of the State of Oklahoma for an order requiring a connection, as was done in the instant case.

Without admitting the truth of the allegation contained in the third grammatical paragraph of said exhibit 1, but specifically denying the same, this defendant in error states that said tender was made pursuant to and in compliance with a provision of Order #17410 in Cause CD #861, which is as follows:

"3. ACREAGE FACTOR— • • •

(b) In determining the units herein prescribed, for the purpose of allocation of gas production only developed acreage shall be considered; and developed acreage shall mean any unit on which there is one of more producing wells having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to make a connection and dispose of his gas at the going price in the field. If the [fol. 807] operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order."

The original of said tender was sent by appellant to the Cabot-Carbon Company, and copy thereof was sent to the Corporation Commission of the State of Oklahoma.

2

The appellant filed no motion for new trial within three days after the entry of the order involved herein, for which reason the appeal on file herein should be by this court dismissed.

Wherefore, defendant in error prays that the appeal on file herein be dismissed and that the order of the Corpora-

tion Commission of the State of Oklahoma be by this court in all things affirmed.

Richardson, Shartel, Cochran & Pruet, by Earl Pruet, 1133 First National Building, Oklahoma City, 2, Oklahoma, Attorneys for said Defendant in Error.

[fol. 808] STATE OF OKLAHOMA,
County of Oklahoma, ss:

Earl Pruet, being first duly sworn on oath, states that he has prepared the above and foregoing motion to dismiss, is familiar with the contents thereof, and the same are true and correct as he verily believes.

Earl Pruet.

Signed, subscribed and sworn to before me this 22nd day of December, 1945. Vera Carter, Notary Public. My Commission Expires May 24, 1948. (Seal.)

STATE OF OKLAHOMA,
County of Oklahoma, ss:

Earl Pruet, being first duly sworn on oath, states that on 22 day of December, 1945, he served the above and foregoing motion to dismiss on plaintiff in error, Republic Natural Gas Company, by mailing true and correct copy thereof to Rainey, Flynn, Green and Anderson, First National Building, Oklahoma City 2, Oklahoma, a copy thereof, and by mailing to Foulston, Siefkin, Bartlett & Morris, Fourth National Bank Building, Wichita, Kansas, a true and correct copy thereof.

Earl Pruet.

Signed, subscribed and sworn to before me this 22nd day of December, 1945. Vera Carter, Notary Public. My Commission Expires May 24, 1948. (Seal.)

[fol. 809] EXHIBIT 1 TO MOTION TO DISMISS

Republic Natural Gas Company
1505 Federal Street
Dallas, Texas
(1)

April 16, 1945.

Cabot Carbon Company, Pampa, Texas.

Attention: Mr. Gene Green.

GENTLEMEN:

Reference is made to Cause CD No. 914, Order No. 17359, made by the Corporation Commission of the State of Oklahoma on November 24, 1944, "In the Matter of the Application of Cabot Carbon Company for Permission to Build a Carbon Black Plant in Texas County for the United States Government."

We are advised that your carbon plant, located in Section 21, Township 3, Range 15, Texas County, Oklahoma, is now in process of construction and will probably be completed sometime in June, 1945.

In its operations in the Hugoton gas area, Republic Natural Gas Company is engaged solely and exclusively in the production and gathering of natural gas, and a portion of its gathering system is located approximately 28,500 feet from your plant.

Upon the assumption that the Corporation Commission of the State of Oklahoma will currently grant Republic Natural Gas Company allowables, permitting it to take ratably from its wells located in the Texas County portion of the Hugoton gas area with other producing wells in Texas County, Oklahoma, this company will have for sale, and does hereby tender to you in compliance with said order, twenty million (20,000 MCF) cubic feet of natural gas per day, to be supplied to you for the duration of the war and six months thereafter, at the price of five cents (5¢) per thousand (MCF), all in accordance with and under the terms of said order.

Republic Natural Gas Company will, upon advice to it that you are prepared to receive the gas tendered hereunder, construct a line of sufficient size and capacity for delivery of said volume of gas to your plant as indicated.

[fols. 810-935] It is assumed that the gas to be purchased will be purchased under the practices and conditions prevalent in the field.

Should your company desire further commitment or specification of detail for the delivery of the gas, we will be pleased to have our representatives confer with you at your pleasure.

Respectfully submitted, Republic Natural Gas Company, by W. H. Wildes, President.

cc: Mr. Tom McMurray, Secretary, Oklahoma Corporation Commission, Oklahoma City, Oklahoma.

WHW:mh

[fol. 936] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

RESPONSE OF PLAINTIFF IN ERROR TO MOTION TO DISMISS—Filed February 15, 1946

Answer to Motion to Dismiss of Defendants in Error

Defendants in error have filed a motion to dismiss this appeal on two grounds.

The first ground is that Republic has availed itself of the benefits of the State's conservation statutes and the basic orders of the Commission issued pursuant thereto, and that said action constitutes an abandonment by Republic of its appeal. Attached to the motion to dismiss is a copy of a [fol. 937] tender of natural gas by Republic to Cabot Carbon Company, and defendants in error's precise point is that this tender constitutes a recognition of the validity of the conservation statutes of the State and the basic conservation orders of the Commission.

The motion filed fails to consider that constitutional inquiry into legislation is not limited to the mere wording of the enactment. A historic illustration is found in Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220, where a laundry ordinance apparently fair and impartial on its face, was so administered that it put Chinese laundrymen out of business, leaving their competitors to continue unhampered.

The ordinance thus applied was held to be violative of constitutional provisions.

Defendants in error erroneously conclude that the attack on the order of the Commission, which requires Republic to purchase gas from Peerless, is an attack on every part of the Oklahoma Statutes, and, we assume, the basic order of the Commission. This is incorrect.

As we fully set forth in our original brief and in our reply brief to answer brief of defendants in error herein, Republic has conceded, and still concedes, that Chapter 197, Session Laws 1915, delegates to the Corporation Commission complete authority and power to determine and fix the amount of gas that may be marketed from any gas pool within the State, and to allocate to each well its part of the total production from said pool. The Commission was authorized to, and has, prescribed rules and regulations for determining these allocations, and we are not questioning its power to do [fol. 938] so. While such allocations are subject to review in case they are arbitrary or unfair, we are not registering such complaint here, or in any such claim involved in this appeal.

It is well settled that one who recognizes the validity of a statute or of administrative action thereunder, or who seeks and obtains property rights under the statute, is not estopped from attacking subsequently enacted statutes. This is illustrated by the case of Frost v. Corporation Commission of Oklahoma, 278 U. S. 515. It appears in that case that Frost obtained from the Corporation Commission a license to construct and operate a gin, such license being necessary under the applicable Oklahoma statute. Thereafter the statute was amended and the amendatory statute was assailed by Frost as unconstitutional and void. It was held by the Supreme Court of the United States that the principle that one who has acquired rights of property necessarily based upon a statute may not attack that statute as unconstitutional had no application, as the one under attack was adopted by subsequent act, and, being invalid, would have no effect upon the provisions of the statute. By acquiescing in the basic order and the statutes upon which it was based, Republic could not be estopped from assailing subsequent orders of the Commission. This Court has uniformly recognized this principle by entertaining appeals from per well allowables and other alleged arbitrary and in-

valid orders of the Commission, even though the complainants had acquiesced in previous valid proration orders.

British-American Oil Producing Co. v. Corp. Commission et al., 180 Okla. 468.

[fols. 939-985] What is involved is the validity of an order directing Republic a producer only of natural gas, to buy gas from Peerless, a competitor producer, and subjecting Republic to severe penalties if it fails to do so.

Republic was granted the right by the Commission's basic order to produce an allocated amount of gas from its wells. At no time since the effective date of the basic order has Republic been able to sell all of its allowable. Having surplus gas which it has not been able to sell, it offered it for sale to the Cabot Carbon Company and notified that Company that this was gas which under the basic order of the Commission, it had the right to produce and sell.

As we have shown in both our original brief and in our reply brief, the order of the Corporation Commission in the instant case, requiring Republic under severe penalties to purchase gas from the Peerless well, is not authorized by any statute of Oklahoma.

The contention that the appeal has been abandoned is obviously without merit.

The second ground of the motion to dismiss is that no motion for new trial was filed within three days after the Commission entered the order involved. We concede that no motion was filed. None was necessary, as has been frequently decided by this Court.

See:

Kansas City Southern Ry. Co. v. Love, 23 Okla. 224, 100 Pac. 22;

Southwestern Bell Tel. Co. v. State, 181 Okla. 246, 71 Pac. (2d) 747;

Pioneer Tel. & Tel. Co. v. State, 40 Okla. 417, 138 Pac. 1033.

[fol. 986] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER DENYING MOTION TO DISMISS APPEAL—Filed March 5, 1946

The Clerk Is Hereby Directed to Enter the Following Orders:

32123—Republic Natural Gas Company v. State of Oklahoma, Corporation Commission, et al. Motion to dismiss appeal denied.

T. L. Gibson, Chief Justice.

[fol. 987] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER SETTING CAUSE FOR HEARING—Filed April 30, 1946

The Clerk Is Hereby Directed to Enter the Following Orders:

32123—Republic Natural Gas Company v. State of Oklahoma and Corporation Commission, et al. Ordered that this cause be set down for hearing on the oral argument docket of Tuesday, May 14, 1946, at 9:30 A. M., or as soon thereafter as same may be heard in regular order, and the Clerk is directed to notify the parties forthwith of the setting thereof.

T. L. Gibson, Chief Justice.

[fol. 988] [File endorsement omitted]

[Title omitted]

IN THE SUPREME COURT OF OKLAHOMA

RENEWAL OF MOTION TO DISMISS—Filed May 14, 1946

Comes now Peerless Oil and Gas Company, a corporation, the Corporation Commission of the State of Oklahoma and the State of Oklahoma and renews the Motion to

Dismiss heretofore filed herein under authority of Mount vs. Schulte, 143 Pac. (2) 424, 193 Okl. 335, and as grounds of said Renewal and Motion state:

1

The plaintiff in error has abandoned its appeal herein and waived its right to prosecute the appeal herein for the reason that it has, since the filing of the appeal herein, taken a position before the Corporation Commission of the State of Oklahoma inconsistent with its position taken on appeal herein and has elected to seek and has sought, the advantages of and recognized the validity of the statutes of this state and the basic orders of the Commission, upon which the order involved herein is based. Attached hereto marked Exhibit 1 and made a part hereof is a tender of natural gas made by the Republic Natural Gas Company to [fol. 989] Cabot Carbon Company, a corporation. By making said tender the Republic Natural Gas Company, plaintiff in error herein, admits the validiti of and seeks to obtain the benefits of the statutes of the State of Oklahoma and the orders of the Corporation Commission of the State of Oklahoma issued pursuant thereto, to-wit: Order #16377 in Cause CD #817; Order #17410 in Cause CD #861; Order #17867 in Cause CD #983, and Order #17359 in Cause CD #914, for the reason that said orders prescribe the manner of the making of tender of natural gas for the purpose of obtaining an allowable for an unconnected well and as a necessary condition precedent to make application to the Corporation Commission of the State of Oklahoma for an order requiring a connection, as was done in the instant case. Attached hereto, marked Exhibit 2 and made a part hereof is a copy of Order #17359 in Cause CD #914.

Without admitting the truth of the allegation contained in the third grammatical paragraph of said Exhibit 1, but specifically denying the same, this defendant in error states that said tender was made pursuant to and in compliance with a provision of Order #17410 in Cause CD #861, which is as follows:

"3. Acreage Factor—

(b) In determining the units herein prescribed, for the purpose of allocation of gas production only developed acreage shall be considered; and developed acreage shall

mean any unit on which there is one or more producing wells having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to make a connection and dispose of his gas at the going price in the field. If the operator of owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing and able to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order."

[fol. 990] And pursuant to and in compliance with a provision of said Order "17359 in Cause CD #914, which is as follows:

> "3. In the manufacture of said carbon black applicant shall be required to purchase all the natural gas produced and offered for sale in the vicinity of said plant, or which may be reasonably reached by pipe lines or other systems in the vicinity of said plant, without discrimination in favor of the producer or person as against another; and if applicant is unable to purchase all of said gas so produced and offered for sale, it shall purchase said natural gas from each person or producer ratably on such ratable basis as shall be established by this Commission or by the laws of the State of Oklahoma."

The original of said tender was sent by appellant to the Cabot-Carbon company, and copy thereof was sent to the Corporation Commission of the State of Oklahoma. In making the tender reflected by Exhibit 1, plaintiff in error has taken the same position with reference to the Statutes of the State of Oklahoma and the Orders of the Corporation Commission entered pursuant thereto as Peerless Oil and Gas Company and the Corporation Commission have taken in the instant case, and plaintiff in error has thereby recognized the validity of the Statutes of the State of Oklahoma and the Order of the Corporation Commission of the State of Oklahoma issued pursuant thereto and involved herein and is therefore no longer entitled to maintain this appeal.

2

The appellant filed no motion for new trial within three days after the entry of the order involved herein, for which

reason the appeal on file herein should be by this court dismissed.

Wherefore, defendant in error prays that the appeal on file herein be dismissed and that the order of the Corporation Commission of the State of Oklahoma be by this court [fol. 991] in all things affirmed.

Richardson, Shartel, Cochran & Pruet, By Earl Pruet, 1133 First National Building, Oklahoma City 2, Oklahoma, Attorneys for said Defendant in Error.

[fol. 992] State of Oklahoma,
County of Oklahoma, ss:

Earl Pruet, being first duly sworn on oath, states that he has prepared the above and foregoing Renewal of Motion to Dismiss is familiar with the contents thereof, and the same are true and correct as he verily believes.

Earl Pruet.

Signed, Subscribed and sworn to before me this 13 day of May, 1946.

Lucille Carter, Notary Public. My Commission Expires: 5-20-46. (Seal.)

State of Oklahoma,
County of Oklahoma, ss:

Earl Pruet, being first duly sworn on oath, states that on the 13 day of May, 1946, he served the above and foregoing Renewal of Motion to Dismiss on plaintiff in error, Republic Natural Gas Company, by mailing true and correct copy thereof To Rainey, Flynn, Green & Anderson, First National Building, Oklahoma City 2, Oklahoma, a copy thereof, and by mailing to Foulston, Siefkin, Bartlett & Morris, Fourth National Bank Building, Wichita, Kansas, a true and correct copy thereof.

Earl Pruet.

Signed, Subscribed and Sworn to before me this 13 day of May, 1946. My Commission Expires: 5-20-46. Lucille Carter, Notary Public. (Seal.)

[fol. 993] EXHIBIT No. 1

Republic Natural Gas Company, 1505 Federal Street, Dallas, Texas

(1)

April 16, 1945.

Cabot Carbon Company, Pampa, Texas.

Attention: Mr. Gene Green

GENTLEMEN:

Reference is made to Cause CD No. 914, Order No. 17359, made by the Corporation Commission of the State of Oklahoma on November 24, 1944, "In the Matter of the Application of Cabot Carbon Company for Permission to Build a Carbon Black Plant in Texas County for the United States Government."

We are advised that your carbon plant, located in Section 21, Township 3, Range 15, Texas County, Oklahoma, is now in process of construction and will probably be completed sometime in June, 1945.

In its operations in the Hugoton gas area, Republic Natural Gas Company is engaged solely and exclusively in the production and gathering of natural gas, and a portion of its gathering system is located approximately 28,500 feet from your plant.

Upon the assumption that the Corporation Commission of the State of Oklahoma will currently grant Republic Natural Gas Company allowables, permitting it to take ratably from its wells located in the Texas County portion of the Hugoton gas area with other producing wells in Texas County, Oklahoma, this company will have for sale, and does hereby tender to you in compliance with said order, twenty million (20,000 MCF) cubic feet of natural gas per day, to be supplied to you for the duration of the war and six months thereafter, at the price of five cents (5¢) per thousand (MCF), all in accordance with and under the terms of said order.

Republic Natural Gas Company will, upon advice to it that you are prepared to receive the gas tendered hereunder, construct a line of sufficient size and capacity for delivery of said volume of gas to your plant as indicated.

[fol. 994] It is assumed that the gas to be purchased will be purchased under the practices and conditions prevalent in the field.

Should your company desire further commitment or specification of detail for the delivery of the gas, we will be pleased to have our representatives confer with you at your pleasure.

Respectfully submitted, Republic Natural Gas Company, By W. H. Wildes, President.

cc: Mr. Tom McMurray, Secretary, Oklahoma Corporation Commission, Oklahoma City, Oklahoma.

WHW:mh.

[fol. 995] EXHIBIT No. 2

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 914. Order No. 17359

In the Matter of the Application of Cabot Carbon Company for Permission to Build a Carbon Black Plant in Texas County for the United States Government

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court room in the Capitol Office Building, Oklahoma City, Okla., on the 18th day of September, 1944, at 10 o'clock, A.M., upon the application of Cabot Carbon Company and pursuant to an order of the Commission setting the cause for hearing and notice thereof published as required by law; at which hearing applicant appeared by its attorney, Ross Rizley, and by E. L. Green, Jr. and Hugh Burdette; various citizens of Guymon and Texas County appeared, representing the Guymon Chamber of Commerce, the city of Guymon, and landowners; and the following protestants appeared: Cities Service Gas Company by R. E. Cullison and Glenn W. Clark; Republic Natural Gas Company by George Siefkin; Northern Natural Gas Company by J. L. Parmalee and C. P. Croft; Skelly Oil Company by Colin C. Rae, Phillips

Petroleum Company by E. G. DeParade; Magnolia Petroleum Company by W. R. Wallace; and Panhandle Eastern Pipeline Company by Edward W. Lange; the Conservation Attorney and Conservation Officer were present, and evidence was adduced and the Commission took the matter under advisement.

Now, on this 24th day of November, 1944, the Commission, having considered all of the evidence received at said hearing and numerous communications from the War Production Board and others interested in the matter, and being fully advised in the premises, finds as follows, to-wit:

Findings

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That applicant, Cabot Carbon Company, shows that it has been requested by the War Production Board of the United States Government to construct a carbon black plant which will use approximately 30,000,000 cubic feet of natural gas per day in the manufacture of carbon black to supply the nation's military requirements; that it is proposed to build said plant with government funds, same to be owned and controlled by Defense Plants Corporation, a corporation created by the Reconstruction Finance Corporation, and leased to Cabot Carbon Company; that applicant proposes to locate said plant in Texas County, near Guymon, Oklahoma, and to use gas produced from the Hugoton Gas Field located in Texas County, and in such manufacture to use the channel process.

3. That in addition to the allegations of the application, the testimony clearly disclosed that the proposed plant is to be built, owned, and controlled by the United States Government, and that the application was in truth and in fact an application of the United States Government as a war measure, through Cabot Carbon Company as agent; that the plant proposed to be constructed would cost more than $1,000,000.

4. That since said hearing the Commission has received several telegrams and had several telephone conversations with representatives of the War Production Board in Wash- [fol. 996] ington, D. C., and has conferred with various operators opposing the issuance of this order.

5. That the Commission is of the opinion that if there is sufficient gas going to waste in other fields of the United States, such gas should be used in the manufacture of carbon black rather than to use the sweet gas produced in the Hugoton Field; and at all times the Commission has relied upon the United States Government, acting through the Chemicals Division of the War Production Board, to furnish information concerning the availability of gas in other parts of the United States.

6. That under date of August 31, 1944, the Commission received a telegram from W. R. Twombly, WPB Chemicals, stating in substance that for the production of 15,000,000 pounds of channel black per year, the Government is to build the plant, and "anything you are able to do to assist in making available the required quantity of natural gas will be appreciated;" that under date of September 5, 1944, the Commission received a telegram from D. P. Morgan, WPB Chemicals, stating among other things: "Cabot Carbon Company has stated the only available gas is from the Hugoton Field in Oklahoma" that under date of November 1, 1944, a telegram from D. P. Morgan, WPB Chemicals, stated among other things: "A study of the carbon black situation just completed shows shortage of channel carbon black with insufficient production to meet the nation's military and essential civilian tire program. Therefore we ask that you consider favorably the request of Cabot Carbon Company for permission to use gas produced from the Hugoton Gas Field in Texas County, Oklahoma."

7. That on or about November 21, 1944, and upon several occasions prior thereto and since the hearing in this cause, W. R. Twombly, of the Chemical Division of the War Production Board, talked with Judge Reford Bond, Chairman of this Commission, by long distance telephone from Washington, D. C. and requested that the Commission act favorably upon the application of Cabot Carbon Company, and in these conversations it was agreed that an additional investigation would be made by the War Production Board

concerning the availability of gas in other fields, and the Commission is advised that such investigation was made; that on the 21st day of November the following telegram was received by Reford Bond, Chairman, signed by W. F. Twombly, WPB Chemicals, to-wit:

> "Military war requirements for channel black as shown in just completed survey by Rubber Director confirms urgent need for Texas County gas for Cabots defense plants corporation plant. It is essential to the successful prosecution of the war that all approved new facilities be brought into production at once without further delay. South Eunice Gas is needed elsewhere in the approved program. Therefore Texas County Gas is essential for Cabot to produce its portion of the required expansion. All arrangements have been made to proceed at once with construction of plant when Gas is approved. Continued delay will impede war effort. This request for Oklahoma gas is made only for the duration of the emergency plus six months. Prompt action on the part of the Oklahoma Commission is urgently requested."

8. That in peacetime conditions it may be determined that the use of sweet gas in the manufacture of carbon black is waste, but when authorized federal agencies assert that the use of sweet gas in the manufacture of carbon black is essential to win the war and that every day granting of the application is delayed, winning the war is delayed, and that prompt action is necessary, then it can no longer be successfully contended that the use of sweet gas in the manufacture of carbon black for the war emergency is waste, and the Commission does not consider such use waste.

9. That pursuant to the request of the War Production Board, as hereinabove set out, and solely for the purpose of aiding in the war effort, the Commission is of the opinion that a permit should be granted to Cabot Carbon Company as agent of Defense Plants Corporation, a corporation created by the Reconstruction Finance Corporation of the United States Government, to construct carbon black plant [fol. 997] near the city of Guymon in Texas County, Oklahoma, and to use therein approximately 30,000,000 cubic feet per day of natural gas produced from the Hugoton

Gas Field of Texas County, Oklahoma, in the manufacture of carbon black by the channel process.

10. That from the evidence introduced in this cause it appears that no gas should be used in the manufacture of carbon black at a price less than the going price of gas in said field.

11. That the going price of gas in the Hugoton Field in Texas County, Oklahoma, is at this time not less than five cents (5¢) per MCF.

12. That said permit should be subject to the following limitations and qualifications: (1) that same be limited to the duration of the war and six months thereafter; and (2) the price of gas used in said plant shall be at least five cents (5¢) per MCF.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. That applicant, Cabot Carbon Company, as agent and representative of Defense Plants Corporation, a corporation created by Reconstruction Finance Corporation, be, and it is hereby, granted permission to construct a carbon black plant near Guymon, in Texas County, Oklahoma, and to use therein approximately 30,000,000 cubic feet of natural gas produced from the Hugoton Field of Texas County, Oklahoma, per day in the manufacture of carbon black by the channel process.

2. This permit is granted subject to the following conditions and limitations: (1) Same shall continue only for the duration of the war and six months thereafter, at which time it will expire by its terms without additional order of this Commission; and (2) the price of gas used in the manufacture of carbon black in said plant shall be at least five cents (5¢) per MCF, and if less than five cents, this permit shall immediately become inoperative.

3. In the manufacture of said carbon black applicant shall be required to purchase all the natural gas produced and offered for sale in the vicinity of said plant, or which may be reasonably reached by pipe lines or other systems in the vicinity of said plant, without discrimination in favor of one producer or person as against another; and if applicant is unable to purchase all of said gas so produced and

offered for sale, it shall purchase said natural gas from each person or producer ratably on such ratable basis as shall be established by this Commission or by the laws of the State of Oklahoma.

Done and performed by the Corporation Commission of the State of Oklahoma at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 24th day of November, 1944.

Corporation Commission of the State of Oklahoma, Reford Bond, Chairman; Ray O. Weems, Vice-Chairman; ——, Commissioner. (Seal.)

Attest: Tom McMurray, Secretary.

[fol. 998] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

MINUTE ENTRY

May 14, 1946—Orally argued and submitted upon the record and briefs.

[fol. 999] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

No. 32,123

REPUBLIC NATURAL GAS COMPANY, a Corporation, Plaintiff in error,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and Peerless Oil and Gas Company, a corporation, Defendants in error

Order Correcting Opinion

See order attached

Syllabus

1. S. L. 1913, Ch. 198, Sec. 3 (52 O. S. 1941, 233) providing for the ratable taking of gas from a common reservoir or source of supply, is not in irreconcilable conflict with, or

superseded by the provisions of S. L. 1915, Ch. 197 (52 O. S. 1941, 236-247) prohibiting waste of natural gas, and was not repealed by the enactment of said 1915 Act.

2. Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void.

3. Record examined, and held that the order of the Corporation Commission requiring Republic Natural Gas Company to take ratably from a well of Peerless Oil and Gas Company producing from the same common source of supply, or to cease the production of gas from said common source of supply through its own wells, was not arbitrary or beyond the jurisdiction of the Commission.

Appeal from an order of the Corporation Commission of Oklahoma.

[fol. 1000] Affirmed.

Rainey, Flynn, Green & Anderson, Oklahoma City; Robert C. Foulston, George Siefkin, Wichita, Kansas, for Plaintiff in error. Ross Rizley, of Guymon, of counsel.

Richardson, Shartel, Cochran & Pruet, Oklahoma City; Floyd Green, Attorney for Corporation Commission, for defendants in error. Earl Foster, Oklahoma City, Amicus Curiae.

OPINION—Filed February 18, 1947

OSBORN, J:

This is an appeal by Republic Natural Gas Company from an order of the State Corporation Commission, entered on January 10, 1945, requiring Republic to take gas ratably from a well of Peerless Oil and Gas Company in the Hugoton Gas Field in Texas County. In this court on such appeal Republic assails the validity of the order, and of the statutes upon which it is based upon various grounds hereinafter more fully stated.

Peerless, in this court, moves to dismiss the appeal on the ground that Republic, by making a tender for sale of gas

produced from its leases in the Hugoton field, has recognized the validity of the statutes and the previous orders made by the Commission governing the producing and taking of gas from the Hugoton field and is, therefore, estopped now to deny the right of the Commission to make the present order, and for the further reason that no motion for a new trial was filed before the Corporation Commission [fol. 1001] within three days after the order involved in this appeal was entered.

We see nothing in the tender of gas made by Republic which estops or precludes it from asserting the invalidity of the order appealed from, or of the statute, if it may be so construed as to authorize such order. In the previous orders of the Commission governing the production and taking of gas from the Hugoton field the amount of gas to be produced from the wells in that field to supply the market demand was fixed and allocated with as much certainty as the Commission was able to do so, but neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own. Recognition of the Commission's right to make such orders and the production and sale of its gas thereunder in no way recognizes the right of the Commission to require it to take gas from the wells of the other producers.

Nor was the filing of a motion for new trial necessary to preserve to Republic the right of appeal. Holzbierlein vs. State, — Okla. —, 172 P. 2d 1007.

The motion to dismiss is denied.

Proceeding now to consider the appeal on its merits, we briefly summarize the facts established by the evidence adduced before the Commission, upon which its findings and order were predicated. From the evidence it appears that the Hugoton Gas Field, not yet fully defined, covers a territory some 150 miles in length and 50 miles in width, extending from the southern part of the State of Kansas into Oklahoma and Texas, and possibly into Colorado and New Mexico; that practically all of Texas County, Oklahoma, is embraced within the area of the field, which produces [fol. 1002] enormous quantities of gas far in excess of the market demand therefor; that at the time of the hearing before the Commission some 100 wells had been drilled into said field in Oklahoma, and that numerous wells had been drilled into it in the southern part of Kansas; that Republic had drilled some 92 wells in the Kansas portion of the field

and some 38 in the Oklahoma portion, and that additional wells were being drilled into the field in considerable numbers; that Republic, under contract with two pipe lines supplying gas for public consumption, one of which is within the State of Oklahoma, had constructed a pipe line gathering system of large size extending from its main outlet in the State of Kansas into Texas County, Oklahoma, whereby a portion of the production from its wells was transported to its markets in Oklahoma and Kansas; that by its principal contract it was required to maintain an open flow of gas production of more than four times in excess of the daily needs of the purchaser, and that Republic had available a supply of gas largely in excess of such requirement. It further appeared that there was no connection through stock ownership or otherwise between Republic and the pipe line outlets purchasing its gas. Republic drilled its first wells in Texas County, Oklahoma, in 1937, and has since that time been continuously engaged in the drilling of additional wells and in extending and enlarging its pipe line system to take care of the production from such wells. It has at no time held itself out as, or purported to be, a common purchaser or common carrier of gas, nor has it transported gas from any wells other than its own, except that under request of the Petroleum Administrator for War, it carried in its pipe lines, free of charge, gas from certain [fol. 1003] producing wells which the Petroleum Administrator required it to transport as a prerequisite to permitting it to drill additional wells of its own. It also transports gas of its royalty owners under its leases, which require it to pay as royalty 1/8 of the proceeds of the sale of gas.

The well of Peerless is located in Section 14, Township 6 North, Range 15 East, in the northern part of Texas County. Under previous orders of the Commission only one well could be drilled upon each section. The Peerless well was completed as a producer on April 28, 1944, and produces gas in commercial quantities. It is almost surrounded by wells owned and operated by Republic which, according to the testimony of all the expert witnesses who testified on the subject, are draining from under the Peerless lease large quantities of gas which could be produced from it, and for which Peerless and its royalty owners would receive payment if such gas could be marketed by Peerless. For the gas so drained from under the Peerless lease by the

surrounding wells Peerless and its royalty owners, of course, receive nothing, the revenue derived therefrom, which is not susceptible of definite ascertainment or apportionment, being received by Republic and the royalty owners upon whose leases its surrounding wells are located. From the evidence it appears that all of the gas production from the wells in the Hugoton field in Oklahoma is from the same common source of supply, and that to a certain extent the lease upon which the Peerless well is located is, therefore, drained by other wells in the field, but that such drainage is insignificant and inconsequential as compared to the drainage by the nearby wells of Republic, which are much closer to the Peerless well than any other wells in the field.

[fol. 1004] From the evidence it appears that the present needs of Republic do not require the full capacity of its pipe line gathering system, and that a line of said system 8 inches in diameter crosses Section 14, upon which the well of Peerless is located, a short distance from said well. It also appears that Republic does not take from its producing gas wells any gas in excess of its determined allowable, as fixed by the Corporation Commission.

The Corporation Commission, after a full hearing, found that Republic had drilled numerous wells in the Hugoton field in Oklahoma; that it had constructed pipe lines from these wells to its main pipe line, which main pipe line extended some 25 or 30 miles to a connection in Kansas, where it sold its gas to a common purchaser and common carrier of gas, and that it also sold a part of its gas to another common purchaser, the Cities Service Gas Company, at a point within the State of Oklahoma; that one of its gathering lines ran across the land upon which the Peerless well was drilled, and that Republic had several wells on leases adjoining the land on which the Peerless well was drilled, which were draining gas from under the land covered by the Peerless lease, and that the production of natural gas in the Hugoton field was in excess of market demand.

The Commission found that Republic was a common purchaser of natural gas in the Hugoton field; that it was a common carrier of natural gas in said field, and further found that its taking of gas from the Hugoton field was not for the purpose of developing a gas and oil field, or operating oil wells or for the purpose of its own domestic use, and that it was therefore its duty, under S. L. 1913, Ch. 198,

Sec. 3, (52 O. S. 1941; Sec. 233), to take ratably from Peer-
[fol. 1005] less, and that it had refused to do so.

By its order it required Republic to make connection with the Peerless well; that Peerless should lay a line from its well to Republic's line at some point designated by Republic, in Section 14, upon which the Peerless well was located; and that if it failed to make such connection and take gas from the Peerless well within a reasonable time after Peerless had constructed its line, as aforesaid, Republic should no longer be permitted to produce any of its wells located in the Hugoton Gas Field in Oklahoma. It required Republic and Peerless to determine and agree upon the terms and conditions of the taking of the gas of Peerless by Republic, and provided that in the event they could not reach an agreement they could make further application to the Commission for an order fixing such terms and conditions, and the Commission retained jurisdiction for that purpose.

Republic contends that the finding that it was a common purchaser of gas and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or common purchaser, or had ever offered to purchase gas from, or carry gas for any other person or the public generally.

We think it unnecessary to pass upon this contention, since from the record it clearly appears that the finding of the Commission that 52 O. S. 1941, sections 232 and 233, being sections 2 and 3 of Ch. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well.

[fol. 1006] 52 O.S. 1941, sections 232 and 233 read as follows:

Section 232.

> "Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate

to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well."

Section 233.

"Any person, firm or corporation, taking gas from a gas field, except for purpose of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

So far as we have been able to find this court has never been called upon to construe and apply the provisions of these sections. However, we have had occasion to consider similar situations under other conditions, and other statutes. Oklahoma Natural Gas Corporation v. Corporation Commission, 161 Okla. 104, 17 P. 2d 488; Quinton Relief Oil & Gas Co. v. Corporation Commission, 101, Okla. 164, 224 P. 156. The language of Section 233 is plain and unambiguous. The evident purpose is to enforce ratable taking in accordance with the principles announced in Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. Ed. 729, 20 Sup. Ct. [fol. 1007] Rep. 576. By the preceding section (52 O. S. 1941, 232) ratable taking is defined as the proportion which the natural flow of gas from the wells of one producer bears

to the amount of the natural flow from the wells of the other owners producing from the same common source of supply or common reservoir.

The evidence before the Commission indisputably established that the gas taken from the Hugoton field by Republic was not taken for the purposes of developing a gas or oil field, or operating oil wells, or for its own domestic use, but was taken solely for the transportation and sale thereof to common purchasers and common carriers of gas in order that by such transportation and sale Republic might derive a profit, such profit being its sole source of income so far as the record discloses.

Republic does not contend that it is taking ratably from the Peerless well nor does it contend that its surrounding wells do not drain the Peerless well. It, in effect, concedes that it would be required to take ratably from the Peerless well if said section 233 was now in force and effect, but contends that the 1913 law of which said section is a part was superseded by S. L. 1915, Ch. 197, (52 O. S. 1941, sections 236-247).

Republic, in support of its contention that the 1913 Act was repealed and superseded by the 1915 Act, relies upon Application of Jackson, 179 Okla. 577, 66 P. 1101, and Sheridan Oil Co. v. Wall, 187 Okla. 398, 103 P. 2d 507. In Application of Jackson, supra, we held that Section 1, Art. 2, Ch. 26 S. L. 1909 providing for the prevention of waste of natural gas by shutting in and confining the gas until such time as it would be utilized for light, fuel, or power purposes, was superseded by Ch. 197, S. L. 1915, supra, for the reason that the latter Act plainly showed [fol. 1008] that it was intended as a substitute for the prior Act, but, in that case we said that the repeal only affects those provisions shown to have been substituted by later and more comprehensive provisions, and that the remaining provisions of the 1909 Act could be construed in harmony with the 1915 Act to effect the intention of the legislature on the subject of conservation.

In Sheridan Oil Co. v. Wall, supra, we held that Section 11581 O. S. 1931, relating to the plugging of oil wells under the supervision of the Chief Mine Inspector was superseded by Section 3671 O. S. 1931, which granted to the Corporation Commission exclusive jurisdiction over the plugging of oil and gas wells. We there held that there was an irreconcilable conflict between the two sections and

that the section vesting the power in the Corporation Commission being a later enactment, it was evident that the legislature intended to confer upon the Commission power and authority to supervise the plugging of oil and gas wells unhampered by the prior law.

The decisions in the two cases cited do not support the contention of Republic. Examination of Ch. 198 S. L. 1913, supra, discloses that it was enacted primarily to enforce ratable taking and protect correlative rights. Ch. 197 S. L. 1915 was enacted primarily for the prevention of waste, and authorizes the Commission to enforce ratable taking not only to prevent waste but to protect the interests of the public, and of all having the right to produce from a common source of supply. 52 O. S. 1941, section 239.

While the 1915 Act contains provisions regulating the ratable taking of gas from a common source of supply by persons engaged in the business of purchasing and selling [fol. 1009] gas and making such persons common purchasers, it is evidence that the above quoted provisions of the 1913 law go further and require one who is engaged in the business of producing, transporting and selling gas to take ratably from other producers from the same common reservoir who have no outlet for their production, regardless of whether the party so transporting and selling his own gas be a common carrier or common purchaser of gas from that reservoir.

In Champlin Refining Co. v. United States, —U. S. —, 91 L. Ed. 9, 67 Sup. Ct. Rep. 1, the Supreme Court of the United States held that under section 19 (a) of the Interstate Commerce Act, the Interstate Commerce Commission could lawfully require the Champlin Refining Company to furnish information as provided in said section, although it was not a common carrier or common purchaser, but transported only its own products through its pipe line from one state to another. This holding by the Supreme Court was based upon a provision in the Interstate Commerce Act that the term common carrier as used therein included all pipe line companies. This case supports the contention of Peerless, upheld by the Corporation Commission, that the above quoted sections of the 1913 Act extended the obligation to take ratably to include another class besides common purchasers and common carriers. No similar provision is contained in the 1915 Act, nor is

such provision in irreconcilable conflict with anything therein contained.

It is also significant that both the 1913 Act and the 1915 Act were brought forward in the 1921 Code, the 1931 Code, and the 1941 Code, so that it is apparent that the legislature in adopting the 1941 Code did not consider the 1913 law superseded by the 1915 law.

[fol. 1010] It follows that under Section 3 of the 1913 law above quoted the Commission could require the Republic to take gas ratably from the Peerless well, by ordering it to take from the Peerless well the same proportion of gas which it was taking from its own wells having substantially the same natural flow, or in the alternative, desist from selling gas from its own producing wells.

In support of its contention that if the 1913 law was not superseded by the 1915 law, the 1913 law is unconstitutional as depriving it of its property without due process of law, Republic relies upon Texoma Natural Gas Co. v. Railroad Commission of Texas, 59 Fed. 2d 750, and Thompson v. Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, but in each of those cases the conservation Act stricken down as unconstitutional was enacted long after the parties who were there required to take gas from the wells of others had entered the state and made contracts for the production and purchase of natural gas. This fact distinguishes them from the instant case and, in our judgment, deprives them of controlling force.

In the instant case the record discloses that both the 1913 and 1915 Acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state, and engaged in such business and entered into its various contracts. Having entered this state and obtained the privilege of conducting its business operations therein when said laws were in full force and effect, it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation v. Phoenix Re-[fol. 1011] fining Co., 259 U. S. 125, 66 L. Ed. 855, 42 Sup. Ct. Rep. 440.

In that case the Supreme Court, passing upon a similar contention held:

> "A claim so similar to the one we have here that the disposition of it should have been accepted as disposing

of this case was dealt with by this court in Pipe Line Cases, 234 U. S. 548, 561, in a single sentence, saying: 'So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid.'

There is nothing in the nature of such a sonstitutional right as is here asserted to prevent its being waived or the right to claim it barred, as other rights may be, by deliberate election or by conduct inconsistent with the assertion of such a right. Pierce v. Somerset Railway, 171 U. S. 641, 648; Wall v. Parrot Silver & Copper Co., 244 U. S. 407, 411."

Republic contends that the order invades the field of federal cognizance and interferes with and burdens commerce between the states, contrary to Art. 1, section 8 of the Federal Constitution, citing Texoma Natural Gas v. Railroad Commission of Texas, supra. Assuming without deciding that in some instances such an order might burden commerce between the states, there is here no showing that such effect will be produced by the order here appealed from. The evidence shows that Republic is delivering gas to a common purchaser within the State of Oklahoma. There is no showing that the order of the Commission will in any way operate to restrict, hamper or interfere with any interstate operations of Republic, or that the order may not be complied with by operations conducted solely within the State of Oklahoma.

Republic asserts that the order made by the Commission is arbitrary and beyond the jurisdiction of the Commission, and that its effect is to require Republic to become a common purchaser of gas in the Hugoton field.
[fol. 1012] We think these assertions are not sustained either by the law or by the facts.

By 52 O. S. 1941, section 239, the Corporation Commission is given the right to regulate the taking of natural gas from any common source of supply so as to protect the interests of all those having the right to produce therefrom. This provision vested in the Corporation Commission power and authority to enforce ratable taking under the provisions of section 233, supra. The record shows that the Commission had theretofore made a general order fixing allowables and governing the taking of gas from said field, and obviously the present order, made after notice and a

full hearing, was for the purpose of correcting an inequality in the taking of gas from said field whereby the correlative rights of Peerless were being infringed. Under the evidence and the authority granted by section 233, supra, the order was justified, and was not an arbitrary act of the Commission, nor beyond its power and jurisdiction.

Neither did the order require Republic to become a common purchaser, since it gave Republic a choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or to shut in its own production from the same common source of supply. It was left free to choose either of these three methods of correcting the inequality in taking and the consequent infringment of the correlative rights of Peerless.

The order of the Commission is affirmed.

Hurst, C.J., Davison, V.C.J., Riley, Bayless, Welch, Corn, Gibson, and Arnold, JJ: Concur.

[fols. 1013-1015] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER CORRECTING OPINION—Filed March 25, 1947

It Is Ordered that the second paragraph of the syllabus in the above styled cause be corrected to read as follows:

> "Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

Done by order of the conference this 24th day of March, 1947.

Thurman S. Hurst, Chief Justice.

[fol. 1016] [File endoresment omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed March 3, 1947

Comes now Republic Natural Gas Company, a corporation, plaintiff in error herein, and petitions this Court to grant it a rehearing from the decree and judgment rendered by this Court on the 18th day of February, 1947, in this cause, affirming Order No. 17463 in Cause No. 902 of the Corporation Commission of Oklahoma, entered on January 10, 1945, requiring plaintiff in error to take gas from a well of Peerless Oil and Gas Company in the Hugoton Gas Field in Texas County, Oklahoma.

As grounds for rehearing plaintiff in error says that said decision and judgment is in conflict with controlling decisions to which the attention of the Court has not been called in this case, either in brief or oral argument, and is [fol. 1017] also in conflict with decisions which have been overlooked by this Court.

Plaintiff in error, in its petition in error and in its brief and oral argument herein, asserted that Chapter 198, Session Laws 1913, as construed and applied by the Corporation Commission denies it the equal protection of the law and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23 of Article 2 of the Constitution of the State of Oklahoma. In support of such contention, plaintiff in error relied upon the cases of: Texoma Natural Gas Co. v. Railroad Commission of Texas, 59 Fed. (2d) 750, and Thompson v. Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, as being decisive thereof. In disposing of this contention, this Court held that:

> "'Where a foreign corporation obtains permission to do business within the State of Oklahoma, and Pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional,

and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

As we construe the holding of this Court herein, it is that even though the state statute and the order of the Commission based thereon and appealed from in this case violates the rights of plaintiff in error guaranteed under the Federal Constitution, this plaintiff in error cannot raise such questions because the statute was enacted before plaintiff in error entered the state. In the two cases last cited above [fol. 1018] it so happened that the corporations entered the state before the enactment of the statute and the opinion herein concludes that such fact distinguishes those cases from the case at bar and makes them inapplicable.

We respectfully submit that in so holding, this Court overlooked and failed to give effect to the rule well settled by more recent decisions of the Supreme Court of the United States:

> " • • • that a foreign corporation by seeking and obtaining permission to do business in a State does not thereby become obligated to comply with or estopped from objecting to any provision in the state statutes which is in conflict with the Constitution of the United States." Power Co. v. Saunders, 274 U. S. 490, 497.

Among other cases so holding are:

Hanover Insurance Co. v. Harding, 272 U. S. 494, 507;

Frost Trucking Co. v. Railroad Commission of California, 271 U. S. 583, 594;

Connecticut General Life Ins. Co. v. Johnson, 303 U. S. 77, 82 L. Ed. 673;

Canadian Pacific Railway Co. v. Sullivan, 126 Fed. (2d) 433 (1942);

Phillips Petroleum Co. v. Jenkins, 297 U. S. 629,

and

Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389, 400, 401, 48 L. Ed. 927, wherein the Supreme Court of the United States says:

> "It is established that a corporation, by seeking and obtaining permission to do business in a state does not

thereby become bound to comply with or estopped from objecting to the enforcement of its enactments that conflict with the Constitution of the United States."

In Phillips Petroleum Co. v. Jenkins, supra, the Supreme Court of the United — said:

[fol. 1019] "Arkansas might have refrained from enactment of statutes creating or authorizing organization of corporations and might have denied to foreign corporations admission to the State. But it may not enforce any part of the chapter of a domestic corporation or any provision of its laws relating to admission of a foreign corporation that is repugnant to the Federal Constitution. If 7137 is repugnant to the equal protection clause, it is without force as a part of the charter contract or otherwise."

All of the foregoing cases were decided subsequent to the case of Pierce Oil Corporation v. Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, upon which this Court based its decision. If the Pierce case is not distinguishable from the later cases, it is in conflict therewith and must fall. However, we think it is clearly distinguishable in several respects. As was said by the Supreme Court of the United States with reference to the facts in the Pierce case, the Oklahoma Constitution provides for a Corporation Commission with large powers of regulation and supervision over oil pipe and other transportation companies and that in 1909 there were enacted various statutes (now found in Title 52, Chapter 2, O.S. 1941) applicable to oil pipe lines. It is provided in said statutes that no corporation, except as authorized therein, should have the right to engage in the business of transporting crude petroleum through pipe lines within the State, and that every corporation engaged in such business under the state law should be deemed a common carrier thereof, as at common law. These statutes also provide that before any corporation should be entitled to the provisions of the Act, it must file with the Corporation Commission an authorized acceptance of the provisions of the statutes and the Constitution of the State, and a plat showing the location and capacity of the company's pipe line (Similar statutes governing gas pipe lines are found in Title 52, Chapter 1, O.S. 1941).

[fol. 1020] The facts in the case further show that the Pierce Company had not only transported its own oil from the Cushing oil field to its refinery at Sand Springs, but had also transported oil for various other parties for hire, and had at one time procured from the Corporation Commission temporary exemption from its duties as a common carrier, pursuant to one of the provisions of the statute. The Republic Natural Gas Company, as shown by the record, and as set forth in the opinion of this Court, has never been a common carrier or a common purchaser of gas. It did not enter the State of Oklahoma as a pipe line company, and has never conducted its business as such by accepting the provisions of the above statute, nor exercised the privileges therein granted. It has simply carried on its business as a producer of gas with its necessary gathering lines wholly located within the gas field, and it has never accepted any privilege or benefit whatever under the Act of 1913.

The order of the Commission, based upon the 1913 Act, applied and attempted to be enforced against plaintiff in error in this case was made long after Republic Natural Gas Company entered the State. Therefore, the order of the Commission was the subsequent enactment of a law within the meaning of the Federal Constitution. Moreover, as held in Connecticut General Life Insurance Co. v. Johnson, supra:

> "A corporation which is allowed to come into a state and there carry on its business may claim, as an individual may claim, the protection of the Fourteenth Amendment against a subsequent application to it of state law."

[fol. 1021] We respectfully submit that this Court should enter its order granting the rehearing herein, and upon rehearing should reverse the order of the Commission.

Respectfully submitted, Rainey, Flynn, Green & Anderson, 735 First National Building, Oklahoma City, Oklahoma; Robert C. Foulston, George Siefkin, Wichita, Kansas, Attorneys for Plaintiff in Error.

Ross Rizley, Guymon, Oklahoma, Of Counsel.
March, 1947.

[fol. 1022] STATE OF OKLAHOMA,
Oklahoma County, ss:

R. M. RAINEY, of lawful age, being first duly sworn, on his oath deposes and says:

That on the 3d day of March, 1947, he served ture and correct copies of the within Petition for Rehearing upon:

Mr. Earl Pruet of the firm of Richardson, Shartel, Coehran & Pruet, 1133 First National Building, Oklahoma City, Oklahoma, attorneys for Peerless Oil and Gas Company, and Mr. Floyd Green, Attorney for the Corporation Commission of the State of Oklahoma, by depositing the same in the United States Mail duly addressed to said attorneys, and with postage thereon fully prepaid, on the 3d day of March, 1947.

R. M .Rainey.

Subscribed and sworn to before me this 3d day of March, 1947, Lola Croft, Notary Public. (Seal.)
My commission expires: June 7, 1947.

[fol. 1023] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—March 25, 1947

The clerk is hereby directed to enter the following orders:

32123—Republic Natural Gas Co., a corp. v. State of Oklahoma, et al. Opinion corrected by order and petition for rehearing denied.

Thurman S. Hurst, Chief Justice.

[fol. 1024] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—Filed March 28, 1947

The motion of plaintiff in error for stay of mandate herein is hereby granted, and it is ordered that the mandate herein be, and the same is hereby stayed for a period of three months from the 25th day of March, 1947, and thereafter until appeal is disposed of by the Supreme Court of the United States if said appeal is filed within said three months.

Thurman S. Hurst, Chief Justice.

[fol. 1025] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR APPEAL—Filed May 14, 1947

To the Honorable Chief Justice of the Supreme Court of Oklahoma:

Your petitioner, Republic Natural Gas Company, respectfully shows that on the 18th day of February, 1947, the Supreme Court of the State of Oklahoma rendered a judgment herein in favor of defendants in error and against plaintiff in error, in which said judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this petitioner, all of which appear more in detail in the assignment of errors filed with this petition.

That after the rendition of said judgment and on the 3rd day of March, 1947, your petitioner filed a petition for rehearing; that thereafter, on the 25th day of March, 1947, said Court entered its order that the second paragraph of the syllabus in this cause be corrected to read as follows:

[fol. 1026] "Where a foreign corporation obtains permission to do business within the State of Okla-

homa, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

And also on the said 25th day of March, 1947, an order was made by said Court, denying said petition for rehearing.

Thereupon an opinion and judgment was filed in this cause by said Court, affirming the order and judgment of the Corporation Commission of the State of Oklahoma, which said opinion and judgment is a part of the record in this cause. Your petitioner, the respondent below before the Corporation Commission of Oklahoma, respectfully shows that there was an order and judgment in said cause by the Corporation Commission of Oklahoma in favor of the defendant in error, Peerless Oil and Gas Company, and against your petitioner, Republic Natural Gas Company, *and against your petitioner, Republic Natural Gas Company*, whereby the said Republic Natural Gas Company was required to make connection with and to take gas ratably from a gas well of the Peerless Oil and Gas Company in the Hugoton, Oklahoma, Gas Filed, and wherein it [fol. 1027] was further ordered by said Commission that in the event of the failure of your petitioner to make such connection and take gas from the Peerless well it should no longer be permitted to produce any of its wells located in said gas field. The order also required Republic and Peerless to determine and agree upon the terms and conditions of the taking of the gas of Peerless by Republic and provided that in the event they could not reach an agreement they could make further application to the Commission for an order fixing such terms and conditions, and the Commission retained jurisdiction for such purpose. Petitioner further shows that upon appeal from said judgment and order to the Supreme Court of the State of Oklahoma, the said order and judgment of the Corporation Commission was affirmed.

And your petitioner further respectfully shows that said Supreme Court of the State of Oklahoma is the Highest court of the State of Oklahoma in which a decision in said cause could be had, and your petitioner claims the right to remove said cause to the Supreme Court of the United States under the statutes of the United States authorizing appeals from state courts, inasmuch as said Court, in making and entering the aforesaid judgment affirming the order and judgment of the Corporation Commission, committed manifest errors to the prejudice of plaintiff in error and it, feeling aggrieved thereby, does hereby appeal therefrom to the Supreme Court of the United States for the reasons specified in its assignment of errors filed herewith and to which reference is made.

[fol. 1028] Petitioner states that the decision and judgment of the Supreme Court of Oklahoma herein is a final judgment in a suit by the highest court of the State of Oklahoma in which a decision in said cause could be had, and that in said cause in said Supreme Court of Oklahoma there was drawn in question the validity of the order of the Corporation Commission and the validity of statutes of the State of Oklahoma, as construed and applied by the Corporation Commission of said State and as construed and applied by the Supreme Court of Oklahoma on appeal, on the ground of said statutes being repugnant to the Fourteenth Amendment to the Constitution of the United States, and the decision and judgment of said Supreme Court of Oklahoma was in favor of the validity of said order and of said statutes as so construed and applied.

Wherefore, premises considered, your petitioner prays for the allowance of an appeal to the Supreme Court of the United States from the aforesaid final judgment and order of the Supreme Court of Oklahoma to the end that the record in said cause may be removed to the Supreme Court of the United States and the judgment and order of the Supreme Court of Oklahoma may be examined and reviewed and the errors complained of herewith duly assigned be corrected, and the said final judgment and order be reversed. Petitioner further prays that a transcript of the record, proceedings and papers in said cause, duly authenti-
[fol. 1029] cated by the Clerk of the Supreme Court of the State of Oklahoma, may be sent to the Supreme Court of the United States, as by law provided, and further prays

that an order be made and entered fixing the amount of bond and security to be given by this petitioner, as appellant, and conditioned as the law directs. Petitioner further prays that the final judgment and order aforesaid by the Supreme Court of Oklahoma be reversed.

Republic Natural Gas Company, by Robert M. Rainey, Robert C. Foulston, Attorneys for Republic Natural Gas Company, Petitioner.

[fol. 1030] [File endorsement omitted]

IN THE SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 14, 1947

It appearing to the undersigned, the Chief Justice of the Supreme Court of the State of Oklahoma, that plaintiff in error, Republic Natural Gas Company, has filed its petition for appeal to the Supreme Court of the United States and has filed therewith its assignment of errors and also its statement as to the jurisdiction of the Supreme Court of the United States, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question,

Now, Therefore, It Is Ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment rendered in this cause on the 18th day of February, 1947, which became final March 25, 1947.

[fol. 1031] It Is Further Ordered that enforcement of said judgment of the Supreme Court of the State of Oklahoma be and is hereby stayed pending final disposition of said appeal, said stay to become effective upon appellant's filing with the Clerk of the Supreme Court of the State of Oklahoma a bond in the sum of One Thousand Dollars, with sufficient sureties to be approved by the undersigned, conditioned as required by law.

It Is Further Ordered that the Clerk of the Supreme Court of the State of Oklahoma, shall, within Thirty days from the date hereof, prepare, certify and transmit, under his hand and the seal of the Supreme Court of the State of Oklahoma, to the Clerk of the United States Supreme

Court a transcript of the record herein containing a true copy of all material parts of said record which shall be designated by praecipes filed with him by any of the parties hereto.

Dated this the 14th day of May, 1947.

Thurman S. Hurst, Chief Justice of the Supreme Court of the State of Oklahoma. (Seal.)

Attest: Andy Payne, Clerk of Supreme Court of Oklahoma.

[fol. 1032] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 14, 1947

Now comes Republic Natural Gas Company, appellant, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Oklahoma in the above-entitled matter there is manifest error in this, to wit:

I

The Supreme Court of Oklahoma erred in holding that the order of the Corporation Commission of Oklahoma requiring Republic Natural Gas Company to take gas ratably from a well of the Peerless Oil and Gas Company from a common source of supply, or to cease producing gas from its own wells, was not arbitrary or beyond the jurisdiction of the Commission and did not deprive Republic Natural Gas Company of its property without due process of law or deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 1033] II

The Supreme Court of Oklahoma erred in holding that S. L. 1913, Ch. 198, 3 (52 O. S. 1941, 233) providing for the ratable taking of gas from the common source of supply, as construed and applied by the Corporation Commission of Oklahoma in its order and judgment requiring Republic

Natural Gas Company to take gas ratably from a well of Peerless Oil and Gas Company, did not deny Republic the equal protection of the laws and deprive it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

III

The Supreme Court of Oklahoma erred in holding that the provisions of S. L. 1915, Ch. 197 (52 O. S. 1941, 236-247) prohibiting waste of natural gas as construed and applied by the Corporation Commission of Oklahoma in its order and judgment requiring Republic Natural Gas Company to take gas ratably from a well of the Peerless Oil and Gas Company, did not deny Republic the equal protection of the laws and deprive it of its property without due process of law in violation of the Fourteenth Amendment to The Constitution of the United States.

IV

The Supreme Court of Oklahoma erred in holding that state statutes and an order issued pursuant thereto by the Oklahoma Corporation Commission were not repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Federal Constitution when said statutes, as construed and applied by said order, compel a person who is neither a common purchaser nor a common carrier of natural gas, against his will to share his gathering line facilities and his market for his own gas with, and to purchase gas from a well belonging to, another person.

[fol. 1034]

V

The Supreme Court of Oklahoma erred in holding that because Republic Natural Gas Company, a foreign corporation, had obtained permission to do business within the State of Oklahoma, and pursuant to such permission, had entered the State of Oklahoma and produced and transported natural gas therein, it could not be heard to contend that a statute relating to its operations and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the State, is unconstitutional, or to contend that an order of the Oklahoma Corporation Commission made pur-

suant to authority granted by such statute is void, as denying to Republic Natural Gas Company the equal protection of laws and as depriving it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

VI

The Supreme Court of Oklahoma erred in holding that the mere acceptance by Republic Natural Gas Company, a foreign corporation, of a license to transact business in the State of Oklahoma, constituted a waiver by Republic Natural Gas Company of its rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and a waiver of its right to object to being subjected to an application of a state statute, or of administrative orders thereunder promulgated, which contravened the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

VII

The Supreme Court of Oklahoma erred in holding that the State of Oklahoma could lawfully impose upon Republic Natural Gas Company, a foreign corporation, as a condition of granting it the privilege of doing business in Oklahoma, the requirement that Republic Natural Gas Company submit to the application to it of a state statute, and of administrative orders issued thereunder, which are repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

[fol. 1035]

VIII

The Supreme Court of Oklahoma erred in holding that the State of Oklahoma could impose upon Republic Natural Gas Company, a foreign corporation, as a condition of granting it the privilege of doing business in Oklahoma, the requirement that Republic Natural Gas Company surrender the protection afforded to it by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

IX

The Supreme Court of Oklahoma erred in holding that Republic Natural Gas Company, a foreign corporation, by

merely seeking and obtaining the privilege of doing business in Oklahoma, thereby became estopped to object to the enforcement against it of state statutes, and of administrative orders issued pursuant thereto, which deny it the equal protection of laws and deprive it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

X

The Supreme Court of Oklahoma erred in holding that Republic Natural Gas Company, a foreign corporation, by merely seeking and obtaining the privilege of doing business in Oklahoma, thereby waived the right and became estopped to object to a subsequent application to it, by means of an administrative order thereafter promulgated, of a state statute in effect at the time it sought and obtained said privilege, notwithstanding said statute and said administrative order subsequently issued under it are repugnant to the due process of law and equal protection of laws clauses of the Fourteenth Amendment to the Constitution of the United States.

[fol. 1036]

XI

The Supreme Court of the State of Oklahoma erred in affirming the order and judgment of the Corporation Commission of the State of Oklahoma, and in not reversing the order and judgment of the Corporation Commission of the State of Oklahoma.

Wherefore, appellant prays that said judgment be reversed and that judgment be rendered in favor of this appellant, and that it have its costs of this appeal.

Republic Natural Gas Company. By Robert M. Rainey, Robert C. Foulston.

[fols. 1037-1041] Bond on appeal for $1,000 approved and filed May 14, 1947, omitted in printing.

[fols. 1042-1043] Citation in usual form showing service on Earl Pruet, et al., filed May 14, 1947, omitted in printing.

[fol. 1044] [File endorsement omitted]

[Title omitted]

IN THE SUPREME COURT OF OKLAHOMA

PRAECIPE FOR TRANSCRIPT OF THE RECORD—Filed May 14, 1947

To the Clerk of the Supreme Court of Oklahoma:

You are hereby requested to prepare and certify a transcript of the entire record, proceedings and papers in the above-entitled cause, said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 13th day of June, 1947.

Robert M. Rainey, First Nat'l Bldg., Oklahoma City, Oklahoma; Robert C. Foulston, Fourth Nat'l Bank Building, Wichita, Kansas, Counsel for Republic Natural Gas Company, Appellant.

[fol. 1045] ACKNOWLEDGMENT OF SERVICE

The Undersigned, Clerk of the Supreme Court of Oklahoma, hereby acknowledges service of the foregoing Praecipe for Transcript of the Record, this 14th day of May, 1947.

Andy Payne, Clerk of The Supreme Court of The State of Oklahoma. (Seal.)

The undersigned, counsel of record for the Appellees herein, hereby each acknowledge service of the foregoing Praecipe for Transcript of the Record, this 14th day of May, 1947.

Earl Pruet, Attorney for Peerless Oil and Gas Company, a Corporation, Appellee; Mac Q. Williamson, Attorney General of Oklahoma, Appellee; Floyd Green, Attorney for Corporation Commission of the State of Oklahoma, Appellee.

[fol. 1046] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1047] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed June 25, 1947

Comes now Republic Natural Gas Company, Appellant, pursuant to paragraph 9 of Rule 13 of the Rules of this Honorable Court, and states that the points upon which it tends to rely in this Court upon this appeal are as follows:

I

The Supreme Court of Oklahoma erred in holding that the order of the Corporation Commission of Oklahoma requir-
[fol. 1048] ing Appellant to take gas ratably from a well of Peerless Oil and Gas Company, Appellee, to transport such gas in Appellant's private gathering system, and to pay said Appellee therefor, was not arbitrary and beyond the Commission's jurisdiction and did not deprive this Appellant of its property without due process of law or deny Appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

II

The Supreme Court of Oklahoma erred in holding that S. L. 1913, Ch. 198, §3 (52 O. S. 1941, 233; 52 Okl. St. Ann. §233, p. 500), providing for the ratable taking of gas from common sources of supply, as construed and applied by the Corporation Commission of Oklahoma in its order requiring this Appellant to take gas ratably from a well of Appellee Peerless Oil and Gas Company, did not deny this Appellant the equal protection of the laws or deprive it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

III

The Supreme Court of Oklahoma erred in holding that S. L. 1915, Ch. 197 (52 O. S. 1941, 236-247; 52 Okl. St. Ann. §§236-247, pp. 501-509), prohibiting waste of natural gas, as construed and applied by the Corporation Commission of the State of Oklahoma in its order requiring this Appellant to take gas ratably from a well of Peerless Oil and Gas Company, Appellee, did not deny this Appellant the equal protection of the laws or deprive it of its property without

due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

IV

The Supreme Court of Oklahoma erred in holding the aforesaid Oklahoma statutes, and the order purportedly issued pursuant thereto by the Oklahoma Corporation Commission, were not repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Federal Constitution, when said statutes, as construed and applied by said order of said Commission, compel this Appellant, who is neither a common carrier nor a common purchaser of natural gas and whose gathering line has at all times been devoted exclusively to carrying its own gas produced from its own wells, and who has never purchased gas from or transported gas for any other person, against its will to share its gathering line facilities and its market for its own gas with, and to purchase gas from a well belonging to, the Appellee Peerless Oil and Gas Company. That said statutes, as construed and applied by said order, [fol. 1049] attempt to impose upon this Appellant, a private carrier of its own gas, the obligations and duties of a common carrier. That said order, purportedly issued pursuant to said statutes, was issued not to prevent waste, but solely in order to enhance the private so-called "correlative rights" of the Appellee Peerless Oil and Gas Company. That the effect of said order, purportedly issued pursuant to said statutes, was to prorate private markets for gas developed and owned by this Appellant, and to prorate private gathering lines owned by this Appellant and operated, exclusively, to gather and carry gas from wells owned by this Appellant and to deliver the same to said private markets of this Appellant, and that said order does not purport to prorate production, as distinguished from markets and facilities for reaching said markets. That, having upheld and enforced said order and said statutes as so construed, the final judgment of the Oklahoma Supreme Court and the statutes and order enforced thereby are repugnant to the equal protection of laws and the due process clauses of the United States Constitution.

V

The Supreme Court of Oklahoma erred in holding that the mere acceptance by this Appellant, a foreign corpora-

tion, of the privilege of transacting business in the State of Oklahoma, constituted a waiver by Appellant of its right, guaranteed by the Fourteenth Amendment to the Federal Constitution, to resist being subjected to an application, by order of the Oklahoma Corporation Commission, of the aforesaid Oklahoma statutes which, together with said Commission order purportedly issued pursuant thereto, contravene the equal protection and due process clauses of the Fourteenth Amendment to the Federal Constitution as said statutes and said order are sought herein to be applied to this Appellant. That the final judgment of the Supreme Court of Oklahoma, holding that merely because this Appellant accepted a license to do business in Oklahoma at a time when the aforesaid Oklahoma statutes were in force and effect, this Appellant thereby became estopped to attack said statutes or the order of the Corporation Commission of the State of Oklahoma purportedly issued pursuant thereto, even though said statutes and said order, as attempted to be applied to this Appellant, are repugnant to the equal protection of laws and due process clauses of the Federal Constitution, itself denies to this Appellant the equal protection of laws and deprives this Appellant of its property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution.

VI

The Supreme Court of Oklahoma erred in holding that the State of Oklahoma could and did lawfully impose upon this Apellant, a foreign corporation, as a condition of granting it the privilege of doing business in Oklahoma, the [fol. 1050] requirement that this Appellant surrender the protection afforded to it by the equal protection and due process clauses of the United States Constitution, and could and did require this Appellant to submit to the application to it of the aforesaid Oklahoma statutes and of the aforesaid order of the Oklahoma Corporation Commission purportedly issued pursuant thereto, when said statutes and said order, as applied to this Appellant, are repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Federal Constitution; and that said court further erred in holding that such a waiver by this Appellant, even if given, would be and is binding, when, in fact, such a waiver if given would itself be, and, if considered as having been given, is void and unenforceable

as repugnant to the due process of law and equal protection of laws clauses of the Federal Constitution.

VII

The Supreme Court of Oklahoma erred in holding that this Appellant, a foreign corporation, by merely obtaining the privilege of doing business in Oklahoma at a time when the aforesaid Oklahoma statutes were in force and effect but had not been construed or applied by the Oklahoma Corporation Commission to any person engaged in a business comparable to Appellant's, thereby waived and became estopped to object to a subsequent application to it, by means of an administrative order thereafter promulgated, of said state statutes, notwithstanding said statutes and said order, as applied to this Appellant, are repugnant to the due process and equal protection of laws clauses of the Fourteenth Amendment to the Federal Constitution. That prior to the said Commission order, affirmed by the final judgment of the Oklahoma Supreme Court, said statutes had never been construed by any court or applied by any commission so as to subject to their authority a private carrier of his own gas from his own wells in his own gathering system, and that said order of said Commission constituted both a subsequent, unconstitutional application to this Appellant of said Oklahoma statutes, and also the enactment and issuance of a subsequent statute in and of itself; that, therefore, said attempted application to this Appellant of said statutes and of said order may not be considered embraced by any supposed waiver by this Appellant at the time it accepted the privilege of doing business in Oklahoma.

VIII

That said final judgment of the Supreme Court of Oklahoma is erroneous and should be reversed because:

(a) This Appellant is a private carrier of its own gas from its own wells, and has never purchased gas from or transported gas for any other person; therefore, the Oklahoma statutes and the order of the Oklahoma Corporation [fol. 1051] Commission, purportedly issued pursuant thereto, may not constitutionally require this Appellant to take gas ratably from the well of Appellee Peerless Oil and Gas Company; said statutes and said order are repugnant

to the due process and equal protection of laws clauses of the Federal Constitution, as the same are applied to this Appellant, and the Oklahoma Supreme Court erred in upholding the validity thereof.

(b) This Appellant is not estopped to raise said constitutional objections, mere acceptance of the privilege of doing business in Oklahoma not constituting a waiver of the right to resist subjection to unconstitutional statutes and Commission orders, the exaction of such a waiver being itself an unconstitutional and void condition beyond the power of the State of Oklahoma to prescribe as the price for permitting Appellant to do business in that state, and the application of said statutes to Appellant being the result of an innovative interpretation thereof by the Oklahoma Corporation Commission long subsequent to Appellant's entry into Oklahoma, and the Commission's subsequent order itself being a legislative promulgation and, hence, a subsequent statute to which the doctrine of estoppel would in no event be applicable; and refusing to afford Appellant relief from subjection to said statutes and said Commission order which, as applied to Appellant, are repugnant to the due process and equal protection of laws clauses of the Fourteenth Amendment to the Constitution of the United States, upon the invalid and improper ground of estoppel, was erroneous and was itself a denial to this Appellant of the equal protection of the laws and a deprivation of this Appellant's property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

Your Appellant further represents that the entire record, as filed in the office of the Clerk of this Honorable Court, is necessary for the consideration of this appeal, and hereby designates that all parts of said record be printed.

Robert M. Rainey, Robert C. Foulston, John F. Eberhardt, Counsel for Appellant.

[fol. 1052] ACKNOWLEDGMENT OF SERVICE

The undersigned, counsel of record for the Appellees herein, hereby each acknowledge service of the foregoing statement of points to be relied upon and designation to print entire record this 23 day of June, 1947.

Earl Pruet, Attorney for Peerless Oil and Gas Company, a corporation, Appellee; Mac Q. Williamson, Attorney General of Oklahoma, Appellee; Floyd Green, Attorney for Corporation Commission of the State of Oklahoma, Appellee.

[fol. 1053] [File endorsement omitted]

[fol. 1054] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 13, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 52,360. Oklahoma, Supreme Court. Term No. 134. Republic Natural Gas Company, Appellant, vs. State of Oklahoma, Corporation Commission of the State of Oklahoma and Peerless Oil and Gas Compani. Filed June 16, 1947. Term No. 134 O. T. 1947.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

REPUBLIC NATURAL GAS COMPANY,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL AND GAS COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT AS TO JURISDICTION

ROBERT M. RAINEY,
ROBERT C. FOULSTON,
Counselors for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

No. 32123

REPUBLIC NATURAL GAS COMPANY, A CORPORATION,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL AND GAS COMPANY, A CORPORATION,
Appellees

JURISDICTIONAL STATEMENT

Pursuant to the provisions of Rule No. 12 of the Supreme Court of the United States, Republic Natural Gas Company, appellant, files this its separate statement particularly disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment and decree of the Supreme Court of Oklahoma appealed from herein, as follows:

I

Basis upon Which It Is Contended That the United States Supreme Court Has Jurisdiction

The judgment of the Supreme Court of Oklahoma upheld as valid statutes of the State of Oklahoma and an order

of the Oklahoma Corporation Commission issued thereunder denying the specific and timely contention of appellant that said statutes and said order denied appellant the equal protection of laws and deprived appellant of its property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution. Said judgment further held that appellant, a foreign corporation, by having applied for and accepted the privilege of doing business in Oklahoma at a time when said statutes were in effect (although they had not then been construed as authorizing an order such as that entered herein by the Oklahoma Corporation Commission, and although no application of said statutes to appellant was sought until many years thereafter), waived the right and was estopped to object to the constitutionality of said statutes and said order, thereby upholding the validity of said statutes and order despite appellant's specific and timely assertions that the same were repugnant to the equal protection and due process clauses of the Federal Constitution.

Said final judgment was rendered by the highest court of the State of Oklahoma in which a decision could be had, and it upheld the validity of the statutes and of the order aforesaid in a suit in which the question of the validity thereof was specifically and timely drawn in question on the ground of their being repugnant to the equal protection of laws and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

II

Statutory Provisions Believed to Sustain Jurisdiction

The statutory provision vesting the Supreme Court of the United States with jurisdiction of this appeal in Section

237 of the Judicial Code, as amended (28 U. S. C. A. § 344a), which reads:

> "Section 344(a). A final judgment of decree in any suit in the highest court of a state in which a decision could be had . . . where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution . . . of the United States, and a decision is in favor of its validity, may be revived by the Supreme Court upon a writ of error."

By 45 Stat. 54, as amended (28 U. S. C. A. §§861a and 861b), writs of error are abolished and the remedy of appeal is substituted therefor.

III.

The State Statutes and the Order of the Oklahoma Corporation Commission Issued Thereunder, the Validity of Which Are Involved.

The order of the Oklahoma Corporation Commission, the validity of which has been sustained by final judgment of the Supreme Court of the State of Oklahoma, the highest court of said state, as not being repugnant to the Constitution of the United States, is based upon and was issued pursuant to purported delegated legislative power to make said order by virtue of Session Laws of 1913, Chapter 198, page 440, Section 3 (52 O. S. 1941, §233, p. 1607) and Session Laws of 1915, Chapter 197, pages 326 through 329, Sections 1 through 12 (52 O. S. 1941, §§236-247, pages 1608-1609). There is involved upon this appeal the validity of said Oklahoma statutes, as construed and applied by the Oklahoma Corporation Commission and by the Supreme Court of the State of Oklahoma, and the validity of the Oklahoma Corporation Commission's order purportedly issued pursuant thereto.

The specific order of the Oklahoma Corporation Commission reads as follows (copy of complete order is hereto attached):

"ORDER

"It is therefore ordered by the corporation Commission of the State of Oklahoma as follows:

"1. That the respondent, Republic Natural Gas Company, be, and it is hereby required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Grump No. 1 well, located in the Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

Chapter 198, Session Laws 1913 (52 O. S. 1941, § 233, p. 1607) enacts:

"Section 1. All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state.

"Section 2. Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five percent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well.

"Section 3. Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common

point of delivery on or adjacent to the surface overlying such gas.

"Section 4. Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars ($500.00), and each day such violation is continued shall be a separate offense.

"Section 5. Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years."

Chapter 197, Session Laws 1915 (52 O. S. 1941, §§236 through 247, pages 1608-1609) is an act to conserve natural gas, to prevent waste thereof, and to provide for equitable taking and purchase of same, conferring jurisdiction on the Corporation Commission to administer the law and to enforce its orders made pursuant thereto. Section 1 makes unlawful the production of natural gas in such manner and under such conditions as to constitute waste. Section 2 defines the term "waste." Section 3 provides in substance that whenever natural gas in commercial quantities is encountered in any well drilled for oil or gas, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste; it further defines what constitutes a commercial quantity, and confers jurisdiction on the Commission to require the conservation of gas in accordance with the provisions of the Act.

Sections 4 and 5 are as follows:

"Section 4. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall

purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose or prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade."

Section 6 provides for the institution of proceedings before the Corporation Commission and confers jurisdiction upon it to hear and determine any question relating to the enforcement of the Act. Section 7 confers appellate jurisdiction upon the Supreme Court of Oklahoma to review the orders of said Commission made pursuant to the Act. Section 8 confers jurisdiction upon the Corporation Commission to make regulations for the prevention of the waste of natural gas and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas.

Section 9 reads as follows:

"Section 9. Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting

natural gas, as a public service, or otherwise, such person, firm, or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this Act."

Sections 10 and 11 are immaterial for the purposes of this appeal.

Section 12 provides that in addition to any penalty that may be imposed by the Commission for contempt, any person violating the provisions of the Act is guilty of a misdemeanor and subject to fine not exceeding $5,000.00 or by imprisonment, or by both fine and imprisonment.

IV

Date of Judgment and Date of Application for Appeal Therefrom

The date of the final judgment of the Supreme Court of Oklahoma, which is now sought to be reviewed, is February 18, 1947. Finality thereof was stayed by the filing of appellant's petition for rehearing on March 3, 1947. On March 25, 1947, the final judgment of February 18, 1947, was amended by the Supreme Court of Oklahoma, and on the same day said court denied appellant's petition for rehearing without opinion. The judgment as amended therefore became final on March 25, 1947.

Appellant's application for leave to appeal was presented and the appeal was allowed on May 14th, 1947, within three months from the date of the final judgment sought to be reviewed. Hence, said application was timely (28 U. S. C. A. § 350).

V

Nature of The Case and Rulings of Oklahoma Supreme Court Bringing Case Within the Jurisdictional Provisions Relied upon.

In this proceeding Peerless Oil and Gas Company, the owner of a gas well in Hugoton, Oklahoma, gas field, sought and obtained from the Oklahoma Corporation Commission an order, issued pursuant to statutory authority allegedly granted by the aforesaid Oklahoma state statutes, requiring Republic Natural Gas Company, a private corporation which owned and produced gas from its own gas wells in said Hugoton, Oklahoma, field, and gathered the same into its own gathering system, selling to two unrelated pipe line companies its own gas therefrom, which purchased no gas and transported no gas except its own gas from its own gas wells, and which was neither in fact a common purchaser nor a common carrier of natural gas, to accept into its private gathering system and to purchase and take from Peerless, gas which Peerless produced from its gas well.

The essential facts herein are not in dispute. They appear in the written opinion of the Oklahoma Supreme Court, a copy of which is hereto attached. Those material to jurisdictional considerations may be briefly summarized thus:

In 1913 and in 1915 the Oklahoma Legislature enacted statutes which, as construed by the Oklahoma Supreme Court, provided that any person who transports or sells natural gas in Oklahoma—irrespective of whether or not he be *in fact* a common purchaser or a common carrier, either or both—must accept into his private gathering system and must take and pay for, ratably, all natural gas any other person may offer for sale which may reasonably be reached by his gathering system.

In or shortly prior to 1937 (page 63, typewritten opinion of Oklahoma Supreme Court), appellant, a foreign corporation (opinion, p. 70), applied for and accepted the privilege of doing business in Oklahoma (opinion, p. 70). At that time—and until the instant judgment herein appealed from—the 1913 and 1915 statutes had not been construed as applicable or applied to persons not common carriers or common purchasers (opinion, p. 67). Commencing in 1937 (opinion, p. 4), appellant drilled a number of gas wells in the Hugoton field (opinion, p. 63). It constructed its own gathering system (opinion, p. 63). It sold all of its gas from its gathering system to two pipe line companies wholly unrelated to it through stock ownership or otherwise (opinion, p. 63).

Appellant has never held itself out as or purported to be a common carrier or a common purchaser of gas (opinion, p. 63. It has never purchased any gas or transported or sold any gas except its own gas obtained from its own gas wells (opinion, p. 63).[1]

In April, 1944 (opinion, p. 64), Peerless, appellee herein, completed a commercial gas well in the Hugoton field (opinion, p. 63). This well is nearly surrounded by wells owned and operated by appellant which are draining gas from Peerless' well (opinion, p. 64). Peerless did not construct a gathering system or otherwise attempt to obtain a market for its gas. Instead, it filed the instant application with the Oklahoma Corporation Commission seeking an order compelling appellant to purchase gas ratably from the Peerless well and carry it to markets in appellant's private gathering system.

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[1] Sole exception is that during World War II, at the insistence of the Petroleum Administrator for War, appellant carried in its gathering lines, free of charge, gas from wells in the Hugoton field owned by other persons; this was an emergency War measure required by the P. A. W. as a prerequisite to permitting appellant to drill additional wells of its own (Opinion, p. 63).

Over appellant's objections that such order, and said statutes if construed as authorizing such order, infringed upon appellant's constitutional rights under the Fourteenth Amendment to the Federal Constitution, the Oklahoma Corporation Commission issued the order prayed for.

Upon appeal to the Oklahoma Supreme Court, appellant again contended, *inter alia*, that said statutes as so construed and said order were repugnant to the equal protection and due process clauses of the Federal Constitution.

The Supreme Court of Oklahoma affirmed the Commission's order and held: (a) that the statutes and the order were not violative of the equal protection and due process clauses of the Federal Constitution (opinion, pp. 65-66, 69-70); and (b) that appellant, by merely having applied for and accepted a license to do business in the State of Oklahoma at a time when said statutes were in effect, although never having been construed or applied, thereby waived the right and was estopped to assert the invalidity of said order and of said statutes, as subsequently construed, interpreted, and applied under the Fourteenth Amendment to the Federal Constitution (opinion, p. 70).

Specific excerpts from the pleadings, assignment of errors to the Oklahoma Supreme Court, briefs, and the court's opinion, clearly demonstrating the appellate jurisdiction of the United States Supreme Court under Section 237 of the Judicial Code, as amended, are hereinafter quoted under subdivision VIII of this jurisdictional statement.

VI

State of Proceedings and Manner in Which Federal Questions Were Raised

Appellant, Republic Natural Gas Company, first raised the Federal issues here involved by specific averments in its answer filed before the Oklahoma Corporation Commission.

Upon appeal from the Commission's order to the Oklahoma Supreme Court, appellant, in its petition in error, assigned as error that the statutes as construed by the Commission and the order itself were repugnant to the equal protection and due process clauses of the Federal Constitution. These assignments of error were renewed by appellant in its specification of those of its assigned errors which it intended to urge upon appeal. The Federal issues were expressly raised in appellant's original and reply briefs to the Oklahoma Supreme Court, in its oral argument to that court, and in its petition for rehearing.

Specific quotations from each of the aforesaid documents, showing precisely when and in what language appellant raised the Federal issues before the Oklahoma Corporation Commission and before the Oklahoma Supreme Court, are given under subdivision VIII of this statement.

VII

Manner in Which Federal Questions Involved Were Passed upon by the Oklahoma Supreme Court

Under subdivision VIII of this jurisdictional statement are listed quotations from the Oklahoma Supreme Court's opinion showing how the court disposed of the Federal issues involved. In brief, however, the Oklahoma Supreme Court held the statutes, and the Commission's order issued pursuant thereto, were not unconstitutional under the due process of equal protection clauses of the Fourteenth Amendment to the Federal Constitution even though appellant was neither a common carrier nor a common purchaser of natural gas For its authority, the court cited *Champlin Refining Co.* v. *United States*, — U. S. ——, 91 L. Ed. 9. The court then distinguished *Thompson* v. *Consolidated Gas Utilities Co.*, 300 U. S. 55, 81 L. Ed. 510, and *Texoma Natural Gas Co.* v. *Railroad Commission of Texas*, 59 F. (2d) 750

(W. D. Texas), two of the authorities relied upon by appellant, upon the ground that in the case at bar appellant, by having obtained the privilege of doing business in Oklahoma at a time when the controversial statutes were in effect, was estopped to contend that the statutes and the order thereunder issued were unconstitutional. *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125, 66 L. Ed. 855, is relied upon by the Oklahoma Supreme Court as substantiating its judgment on the waiver-estoppel issue.

Thus, the Oklahoma Supreme Court held, first, that the statutes and the Commission's order were not repugnant to the Federal Constitution, and, secondly, that appellant was estopped to assert their constitutional invalidity in any event.

VIII

Excerpts from Record Bringing Cause Within Statute Conferring Jurisdiction upon United States Supreme Court.

In appellant's answer filed before the Oklahoma Corporation Commission, the following, among other, defenses were interposed:

> "15. Respondent (Republic Natural Gas Company, present appellant) denies that it has any duty to produce natural gas from its wells ratably with the well of Peerless Oil and Gas Company, or to take, purchase, and produce natural gas from the Peerless Oil and Gas Company's well ratably with the wells of Republic Natural Gas Company; and if any laws of the State of Oklahoma or orders of the Corporation Commission of the State of Oklahoma purport to compel Republic Natural Gas Company, under the facts and circumstances herein alleged, such laws, if any, of the State of Oklahoma are illegal, unconstitutional, and void, for the reasons herein particularly set forth; and if any of the orders, directives of the Corporation

Commission of the State of Oklahoma purport or are to be construed as requiring this respondent, engaged solely in the production and gathering of natural gas and the sale thereof in the field, to purchase and take gas from the applicant when it neither desires to do so and does not need the same, then such rules, regulations, and directives of the Corporation Commission of the State of Oklahoma are unreasonable, illegal, void, and unauthorized." (Pages 36-A to 37-A, Tr. to Okla. Sup. Ct.)

"(h) That respondent has through diligence as aforesaid, provided itself with sufficient acreage, producing wells, gathering lines, and other facilities to fulfill the contracts of sale above referred to, has no desire or need to purchase gas from the said Peerless Oil and Gas Company, and should it be required to do so would result in reducing the amount of gas which the respondent is producing from its own leasehold estates and wells, would deny the respondent the right to market its own gas to the exact extent it was required to purchase gas from the Peerless Oil and Gas Company, and would require a division of the private markets and private facilities of the respondent with others, all without any ownership or investment on the part of the said Peerless Oil and Gas Company.

"(i) Respondent further states that it is not and never has been a common purchaser or common carrier of natural gas, and that it does not purchase any gas for the purpose of transportation or otherwise. That it holds the leasehold estates from which it produces its gas for its own purposes under the terms of oil and gas leases containing the following or similar clauses as relates to its obligations to its lessors under the terms of said leases:

"'The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found, and where not sold shall pay Fifty ($50.00) Dollars per annum as royalty from each such well, and while such

royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof . . .'" (Okla. Sup. Ct. Tr., pp. 44-A to 45-A)

"(e) That the purpose of the application herein is to require the respondent to share its private markets, contracts, and commitments, and the use of its gathering lines and other facilities for the purpose of buying and transmitting gas of the Peerless Oil and Gas Company from the well described in the application, said Peerless Oil and Gas Company not having contributed in money, services, negotiations, skill, forethought, or otherwise, to the development of such markets, and the construction of such pipelines and other facilities.

"That the effect of the granting of the application herein would compel the respondent to buy gas which it has no need for and no desire to buy, thus reducing the amount of gas which it can produce in the exact amount that it would be required to buy gas from the Peerless Oil and Gas Company with the result that its investment would be impaired, its ability to make a return upon investment to pay interest, taxes, administrative expense and other carrying charges would be destroyed, it would be subject to the hazard of sustaining enormous financial losses with the probable inability to carry out its contracts with the purchaser.

"That such result would inevitably follow from the granting of the application herein of Peerless Oil and Gas Company, such company not having contributed in money, services, negotiations, skill, forethought, or otherwise to the development of such market and the construction of the facilities of the respondent.

"20. The respondent further alleges that if Chapter 197 of the Laws of 1915 is valid and constitutional and applicable to the respondent herein, which it specifically denies, then respondent alleges . . ." (Okla. Sup. Ct. Tr. pp. 49-A to 50-A)

"27. Respondent alleges that it is not a common purchaser or common carrier of natural gas, and as herein alleged is engaged solely and exclusively in the business of producing and gathering natural gas and selling the same in the Hugoton gas field to purchasers who take and purchase such gas within said Hugoton gas field, and that it is not within the constitutional right of the State of Oklahoma, or of the Corporation Commission, or of any other legislative body to so define the business of this respondent, or to convert the business of this respondent into that of a common purchaser or common carrier." (Okla. Sup. Ct. Tr., p. 58-A)

"23. Respondent alleges that it has the legal right, so long as it can do so without waste (as such term may be and is legally determined and defined), to produce, gather, and transport in its own lines for the purpose of delivery to the purchasers thereof such gas as it may legally produce, and that it is under no legal or moral obligation to purchase gas from others or to divide with others its markets or marketing facilities. That if the effect of the order issued by the Corporation Commission in said docket referred to above, or in this case, or under the provisions of Chapter 198 of the Session Laws of Oklahoma of 1913, or the provisions of Chapter 197 of the Session Laws of the State of Oklahoma of 1915, or any other acts or statutes of the Legislature of the State of Oklahoma, or under any of the general rules and regulations of the Corporation Commission of the State of Oklahoma are subject to a construction which requires the respondent herein to purchase gas from the Peerless Oil and Gas Company, or any other person, firm, or corporation, or devote its gathering facilities to the use of any other person, firm, or corporation, with or without compensation, or to divide its markets or contracts with the applicant, or any other person, firm or corporation, that such statute, order, rule, or regulations have the inevitable effect of taking respondent's property without due process of law and depriving it of its property without

compensation and without its consent, and is in violation of the provisions of the Constitution of the United States.

"Respondent further alleges that if any statute, order, rule, regulation, or directive, by whatever name known, is intended to be construed to limit the production by this respondent to supply its existing markets and contracts (which this respondent does not understand to be the purport or effect of the order of this Commission of May 5, 1943), or if said statutes, rules, orders, regulations, directives, or other acts permit the production of gas by others without market or market facilities, and permit such production to be substituted for gas production which respondent would otherwise lawfully be permitted to use, thereby requiring respondent to purchase gas which it would otherwise not purchase in order to fulfill its requirements and contracts, that the property of the respondent, together with the contracts, rights, and privileges (are taken and denied), without any process of law, without due process of law, and without compensation; *such orders would be arbitrary, confiscatory, unreasonable, and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.*" (Okla. Sup. Ct. Tr., pp. 53-A to 55-A; emphasis added.)

Appellant's petition in error to the Supreme Court of Oklahoma contained, *inter alia*, the following two assignments of error:

"20. Chapter 198, Session Laws 1913 (Sec. 233, Title 52 O. S. 1941) as construed and applied by the Corporation Commission in ordering plaintiff in error, a producer only of gas, to purchase gas from another producer in the same field, denies it the equal protection of the laws, and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United

States, and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma.

"21. Said Order No. 17463 of the Corporation Commission denies plaintiff in error the equal protection of the laws, and deprives it of its property without due process of the law in violation of the Fourteenth Amendment to the Constitution of the United States, and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma."

In its brief to the Oklahoma Supreme Court, under the heading "Assigned Errors to be Urged" (Brief, page 17), appellant set forth assignments of error number 20 and 21, *supra*, verbatim (Brief, pp. 17, 18), and then stated (Brief, p. 18):

"For the purposes of this brief all of said assignments of error will be presented under the following propositions:

"III. The order of the Corporation Commission commanding Republic, a producer of natural gas in the Hugoton Gas Field, to purchase gas from Peerless, another producer of gas in the same field, denies Republic the equal protection of the laws and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23, Article 2, of the Constitution of the State of Oklahoma. Therefore, said order and any statute of Oklahoma that may be construed as authorizing the making of said order, are null and void."

Proposition "III", quoted immediately hereinabove, is indexed as such at page iii of appellant's brief. It appears as the introductory heading at page 38 of said brief, and the point was duly urged upon the Oklahoma Supreme Court with argument and the citation of authority, at pages 38 through 48 of the brief. It was again presented

by appellant in its "Response of plaintiff in Error to Motion to Dismiss, and Reply Brief of Plaintiff in Error" —for example (page 22):

> "The order also denies Republic the equal protection of the laws and takes its property without due process of law in contravention of the Constitution of Oklahoma and of the Fourteenth Amendment to the Constitution of the United States."

Finally, appellant once again urged this proposition upon the Oklahoma Supreme Court at page 2 of its Petition for Rehearing:

> "Plaintiff in error, in its petition in error and in its brief and oral argument herein asserted that Chapter 198, Session Laws 1913, as construed and applied by the Corporation Commission denies it the equal protection of the law and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23 of Article 2 of the Constitution of the State of Oklahoma. In support of such contention, plaintiff in error relied upon the cases of: Texoma Natural Gas Co. v. Railroad Commission of Texas, 59 Fed. (2d) 750, and Thompson v. Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, as being decisive thereof."

In determining the Federal issues adversely to appellant's contentions, the Oklahoma Supreme Court held (syllabi 2 and 3, written by the Court):

> "'2. Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the state is unconsti-

tutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void.

"3. Record examined, and held that the order of the Corporation Commission requiring Republic Natural Gas Company to take ratably from a well of Peerless Oil and Gas Company producing from the same common source of supply, or to cease the production of gas from said common source of supply through its own wells, was not arbitrary or beyond the jurisdiction of the Commission."

The body of the Oklahoma Supreme Court's opinion meets the Federal issues in this manner:

"In the previous orders of the Commission governing the production and taking of gas from the Hugoton field . . . neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own" (p. 63).

". . . Republic . . . has constructed a pipe line gathering system of large size from its main outlet in the State of Kansas into Texas County, Oklahoma, whereby a portion of the production from its wells was transported to its markets in Oklahoma and Kansas . . . there was no connection through stock ownership or otherwise between Republic and the pipe line outlets purchasing its gas. . . . It (Republic) has at no time held itself out as, or purported to be, a common purchaser or common carrier of gas, nor has it transported gas from any wells other than its own . . . ." (p. 63).

"The Peerless well was completed as a producer on April 28, 1944 . . . It is almost surrounded by wells owned and operated by Republic which, according to the testimony of all the expert witnesses who testified on the subject, are draining from under the Peerless

lease. . . . all of the gas production from the wells in the Hugoton field in Oklahoma is from the same common source of supply . . .'' (p. 64).

''The Commission found that Republic was a common purchaser of natural gas in the Hugoton field; that it was a common carrier of natural gas in said field. . . .

''By its order it required Republic to make connection with the Peerless well . . . and that if it failed to make such connection . . . Republic should no longer be permitted to produce any of its wells located in the Hugoton Gas Field in Oklahoma'' (p. 65).

''Republic contends that the finding that it was a common purchaser of gas and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or common purchaser, or has ever offered to purchase gas from, or carry gas for any other person or the public generally.''

''We think it unnecessary to pass upon this contention, since from the record it clearly appears that the finding of the Commission that 52 O. S. 1941, Sections 232 and 233, being Sections 2 and 3 of Ch. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well'' (pp. 65-66).

''. . . the above quoted provisions of the 1913 law . . . require one who is engaged in the business of producing, transporting and selling gas to take ratably from other producers from the same common reservoir who have no outlet for their production, *regardless of whether the party so transporting and selling his own gas be a common carrier or common purchaser of gas from that reservoir.*

''In Champlin Refining Co. *v.* United States, — U. S. —, 91 L. Ed. 9, 67 Sup. Ct. Rep. 1, the Supreme Court of the United States held that . . . the Interstate Commerce Commission could lawfully require the Champlin Refining Company *to furnish information* as

provided in said section, *although it was not a common carrier or common purchaser*, but transported only its own product through its pipe line from one state to another. . . . *This case supports the contention of Peerless* . . ." (p. 69; emphasis added).

"In support of its contention that . . . the 1913 law is unconstitutional as depriving it of its property without due process of law, Republic relies upon Texoma Natural Gas Co. *v.* Railroad Commission of Texas, 59 Fed. 2d 750, and Thompson *v.* Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, but in each of those cases the conservation Act stricken down as unconstitutional, was enacted long after the parties . . . had entered the state and made contracts for the production and purchase of natural gas. . . .

"In the instant case the record discloses that both the 1913 and 1915 Acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state, and engaged in such business and entered into its various contracts. Having entered this state and obtained the privilege of conducting its business operations therein when said laws were in full force and effect,[2] it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125. . . ." (p. 69 & 70).

"Republic asserts that the order made by the Commission is arbitrary and beyond the jurisdiction of the Commission, and that its effect is to require Republic to become a common purchaser of gas in the Hugoton field.

"We think these assertions are not sustained either by the law or by the facts. . . .

". . . the present order . . . was for the purpose of correcting an inequality in the taking of gas

[2] Admittedly, however, the statute had never before been construed as authorizing such an order as the instant one, nor had the Oklahoma Corporation Commission ever theretofore issued a comparable order: "So far as we have been able to find this court has never been called upon to construe and apply the provisions of these sections." (Opinion, p. 67.)

from said field whereby the correlative rights of Peerless were being infringed . . . and not an arbitrary act of the Commission, nor beyond its power and jurisdiction.

"Neither did the order require Republic to become a common purchaser, since it gave Republic a (Hobson's) choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or to shut in its own production. . . . . It was left free to chose either of these three methods. . . . .

"The order of the Commission is affirmed" (pp. 71 & 72).

IX

Grounds upon Which It Is Contended the Federal Questions Involved Are Substantial

Mere summarization of the holding of the Oklahoma Supreme Court should suffice to demonstrate substantiality of the Federal Issues presented by this appeal.

The final judgment holds that a person producing gas from his own gas wells, gathering the same in his own gathering system, selling his own gas therefrom to an unrelated purchaser, and neither purchasing gas from nor transporting gas for any other person, and, hence, being neither a common purchaser nor a common carrier, may be compelled to accept into his private gathering system and purchase gas from a well owned by a third person. It holds such a producer and gatherer of his own gas may be compelled to reduce his own production from his own wells in order to purchase and accept into his own gathering system gas from a well owned by another person. It holds such a producer and gatherer of his own gas may be required to make his own private gathering facilities available to another person, and to share the market he has for his own gas with another person who has a gas well but no market

and no gathering facilities of his own. And it holds that these results may be compelled not in order to prevent waste of a natural resource, but, merely;

> ". . .. for the purpose of correcting an inequality in the taking of gas from said field whereby the correlative (private) rights of Peerless were being infringed" (opinion, p. 71).

It is submitted this judgment is erroneous, and that the statutes as construed by the Oklahoma Supreme Court and the order of the Oklahoma Corporation Commission pursuant to the alleged authority conferred thereby, are unconstitutional as violative of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution: *Thompson* v. *Consolidated Gas Utilities Co., supra,* 300 U. S. 55, and *Texoma Natural Gas Co.* v. *Railroad Commission of Texas, supra,* 59 F. (2d) 750.

The Oklahoma Supreme Court's final judgment also holds that appellant, by merely having applied for and accepted the privilege of doing business in Oklahoma at a time when the 1913 and 1915 statutes were in effect, waived its right and thereby became estopped thereafter to assert the constitutional invalidity of those statutes. It holds that the State of Oklahoma may impose upon a foreign corporation seeking to transact business in Oklahoma the requirement that, in order to be permitted to do so, the foreign corporation must consent to be bound by statutes repugnant to the Federal Constitution.

It is submitted that the judgment is likewise erroneous in this respect, and that, *at least* where there has been no affirmative, express waiver by the foreign corporation of its right to resist the enforcement of unconstitutional statutes (*Pierce Oil Corp.* v. *Phoenix Refining Co.,* 259 U. S. 125, 66 L. Ed. 855—a decision we consider overruled by subsequent authorities hereinafter cited), the mere fact that

a foreign corporation seeks and obtains the right to do business in a state does not operate as a waiver of its right to assert, or estop it from urging, unconstitutionality of state statutes in effect at the time the license to transact business is obtained: *W. W. Cargill Co.* v. *Minnesota ex rel. Railroad & W. Comm.*, 180 U. S. 452, 45 L. Ed. 619; *Union Pacific Ry. Co.* v. *Public Service Comm.*, 248 U. S. 67, 63 L. Ed. 131; *Hanover Fire Ins. Co.* v. *Carr*, 272 U. S. 494, 71 L. Ed. 372 (see Case Note, 40 Harv. L. Rev. 777); *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, 71 L. Ed. 1165, (see Case Note, 41 Harv. L. Rev. 95); *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 73 L. Ed. 147; *Bacardi Corp.* v. *Domenech*, 311 U. S. 150, 85 L. Ed. 98; *Northwestern Nat. Ins. Co. of Milwaukee, Wis.*, v. *Lee*, 49 F. (2d) 274 (D Oregon, 3 Judge Court); *Canadian Pac. Ry. Co.* v. *Sullivan*, 126 F. (2d) 433 (C. C. A. 1), cert. den. 316 U. S. 696, 86 L. Ed. 1766; and *Spaulding* v. *Douglas Aircraft Co.*, 154 F. (2d) 419 (C. C. A. 9).

In fact, it is submitted that the State of Oklahoma was without constitutional right to exact any such waiver from appellant, and that, even if given, such a waiver of constitutional rights would itself be void and unenforceable: *Union Pacific Ry. Co.* v. *Public Service Comm., supra*, 248 U. S. 67; *Terral* v. *Burke Construction Co.*, 257 U. S. 529, 66 L. Ed. 352; *Frost* v. *Railroad Comm.*, 271 U. S. 583, 70 L. Ed. 1101; *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927; *Phillips Petroleum Co.* v. *Jenkins*, 297 U. S. 629, 80 L. Ed. 943; and *Springfield Fire & Marine Ins. Co.* v. *Holmes*, 32 F. Supp. 964 (D. Mont., 3 judge court), rev. on other grounds, 311 U. S. 606, 85 L. Ed. 384, rehg. den. 311 U. S. 726, 85 L. Ed. 473.

The Oklahoma Supreme Court's ruling on the waiver-estoppel issue is erroneous in any event inasmuch as the 1913 and 1915 statutes had never been construed by the

Oklahoma Supreme Court or by the Oklahoma Corporation Commission as applicable to such a factual situation as is presented by the case at bar, prior to the instant proceedings, and, hence, the unconstitutional application of said statutes to appellant was not attempted until long after appellant had obtained and exercised the privilege of transacting business in Oklahoma:

Hanover Fire Ins. Co. v. *Carr, supra,* 272 U. S. 494;
Frost v. *Corporation Commission, supra,* 278 U. S. 515;
Connecticut Gen. Life Ins. Co. v. *Johnson,* 303 U. S. 77, 82 L. Ed. 673; and
Bacardi Corp. v. *Domenech, supra,* 311 U. S. 150.

X

Cases Sustaining Jurisdiction of United States Supreme Court

(a) The appeal having been perfected within three months from the date on which the judgment of the Oklahoma Supreme Court became final, is timely: 28 U. S. C. A. § 350; *Aspen Mining & Smelting Company* v. *Billings,* 150 U. S. 31, 37 L. Ed. 986; and *Gypsy Oil Comany* v. *Esco,* 275 U. S. 498, 72 L. Ed. 393.

(b) Appeal is the proper remedy for review of a decision of a State court of last resort in favor of the validity of a State statute, and of an administrative order issued pursuant to legislative authority purportedly delegated by such statute, where the statute and the order thereunder issued are alleged to infringe the Federal Constitution; 28 U. S. C. A. § 344 (a); *Western Turf Ass'n* v. *Greenberg,* 204 U. S. 359, 51 L. Ed. 520; *Great Northern Ry. Co.* v. *State of Minnesota,* 278 U. S. 503, 73 L. Ed. 477; *Nashville & St. L. Rys.* v. *White,* 278 U. S. 456, 73 L. Ed. 452; *Hamilton* v. *Regents of the University of California,* 293 U. S. 245, 79 L.

Ed. 343; and *Curry* v. *McCandless*, 307 U. S. 357, 83 L. Ed. 1139.

XI

Copies of All Opinions Delivered in Connection With the Judgment Sought to Be Reviewed

Appellant appends to this jurisdictional statement a copy of Order No. 17463 in Cause No. 902 before the Oklahoma Corporation Commission; a copy of the opinion and judgment of the Supreme Court of the State of Oklahoma, rendered upon appeal from the aforesaid Commission order on February 18, 1947; a copy of appellant's petition for rehearing filed March 3, 1947; a copy of the order of the Supreme Court of the State of Oklahoma entered on March 25, 1947, correcting the second paragraph of syllabus 2 of its February 18, 1947, opinion; and a copy of the Oklahoma Supreme Court's order of March 25, 1947, denying appellant's petition for rehearing.

Dated this 14th day of May, 1947.

Respectfully submitted,

ROBERT M. RAINEY,
First Nat'l. Bldg.,
Oklahoma City, Oklahoma;
ROBERT C. FOULSTON,
Fourth Nat'l Bank Building,
Wichita, Kansas;
Attorneys for Appellant.

APPENDIX "A"

[Stamp:] Filed in Supreme Court of Oklahoma, May 1, 1947. Andy Payne, Clerk.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

#32,123 Republic Natural Gas Co. vs. State of Oklahoma

In the Matter of the Application of Walker T. Pound, Conservation Officer, for a Well Spacing Order and Rules and Regulations Governing Production and Ratable Taking of Natural Gas in the Guymon Hugoton Field, Texas County, Oklahoma.

Cause CD No. 983

Order No. 17867

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock, A. M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made: Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C. Foulston, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. De Parade for Phillips Petroleum Company; Del Howard and Joe Rolston Jr. for Cities Service Gas Company; Jarman & Jarman by Ed White for A. P. Gardner; and John Schoeppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the

Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1945, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its Order No. 17410 in Cause CD No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1, 1945.

4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the largest known gas reserves in the United States; that a large portion of said field lies within Texas County, Oklahoma, and has been named by this Commission the "Guymon-Hugoton Pool"; that the probable productive area of said pool is hereinafter more specifically described in this order.

5. That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons

and are found at an approximate depth of 2810 feet; that the average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

6. That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which if not equalized by counter-drainage from other properties, results in disproportionate production by the wells on the respective properties.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool, and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410 should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

11. That pursuant to said statutes the Corporation Commission in January 1945 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent

any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the general Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and percentage of capacity to produce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental Survey; that drilling units should be established for said Guymon-Hugoton Pool, which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capacity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas taken from said field, and ultimately the approximate amount of gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, and where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that is fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying such unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit or to

make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowlowable for such unconnected well should begin as hereinafter provided in this order.

19. The there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period, and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage not offset by counterdrainage, and encourage future development.

Declaration of Policy

It is the intention, purpose, and policy of the Corporation Commission of the State of Oklahoma in issuing this order to promulgate rules and regulations as authorized and directed by the laws of the State of Oklahoma governing production of natural gas in order to prevent waste, providing a uniform method of determining a percentage of the well's capacity to produce, and for ratable taking of gas, in order to protect the interests of the public and all parties interested therein, and to give each operator an opportunity to produce currently his proportionate part of the gas and ultimately to produce approximately the amount of gas originally underlying the surface of the land owned by him.

It is not the intention to limit or restrict the market demand for gas in the Guymon Hugoton Pool, but only to restrict production to market demand and prorate production equitably and fairly among the producers and owners.

It is further the intention of the Commission that that portion of the Hugoton Field in the State of Oklahoma be referred to as the Guymon Hugoton Pool.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area

of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;

Townships Two (2), Three (3), and Four (4) North, Ranges Twelve (12) to Eighteen (18) East; and

Townships Five (5) and Six (6) North, Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian,

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above described shall be drilled in the manner and according to the pattern herein described.

The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled at points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. Allocation Formula—A formula shall be, and is hereby, adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. Acreage Factor—(a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed

acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit, or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. Before any unconnected well shall be granted an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in

each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) Deliverability Factor—Pressure—The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72-hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure then the corresponding stabilized producing rate, expressed in MCP per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above atmosphere assumed

to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R\left(\frac{(P^2 - Pd^2)}{(P^2 - Pw^2)}\right)^{.85}$$

Where D—Deliverability
R—Observed producing rate
P—Shut-in pressure of the well, pounds absolute
Pd—Deliverability standard pressure, converted to pounds absolute
Pw—Working well-head pressure at Rate P, pounds absolute

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered in connection with the average relationship between the estimated capacity to produce and deliverability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable

shall be made retroactive to the date when the well was first entitled to an allowable.

(b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. *Well Allowables*—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall

immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of communitized acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. *Allowable Periods—Hearings*—There are hereby established two market demand periods for each year, one beginning April 1 and ending September 30 and the other beginning October 1 and ending March 31, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the aproval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. *Underproduction and Overproduction*—All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for

the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be canceled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering

this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and Performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

REFORD BOND,
Chairman;

RAY O. WEEMS,
Vice-Chairman;

____ ____,
Commissioner.

Attest:

TOM MCMURRAY,
Secretary.

[SEAL.]

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 983

Order No. 17867

In the Matter of the Application of WALKER T. POUND, Conservation Officer, for a Well Spacing Order and Rules and Regulations Governing Production and Ratable Taking of Natural Gas in the Guymon-Hugoton Field, Texas County, Oklahoma.

Report of the Commission

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock A. M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made; Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C. Foulston, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. DeParade for Phillips Petroleum Company; Del Howard and Joe Rolston, Jr. for Cities Service Gas Company; Jarman and Jarman by Ed White for A. P. Gardner; and John Schoeppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1945, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

Findings

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate and hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon-Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its Order No. 17410 in Cause C. D. No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1st, 1945.

4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the largest known gas reserves in the United States; that a large portion of said field lies within Texas County, Oklahoma, and has been named by this Commission the "Guymon-Hugoton Pool"; that the probable productive area of said pool is hereinafter more specifically described in this order.

That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet; that an average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others; which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which if not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool, and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410 should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for

determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

11. That pursuant to said statutes the Corporation Commission in January 1945, adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the general Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which average and percentage of capacity to produce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental Survey; that drilling units should be established for said Guymon-Hugoton Pool which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capacity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to

give to each producer and owner an opportunity to produce currently his proportionate part of the gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, and where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that it fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying said unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit or to make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowable for such unconnected well should begin as hereinafter provided in this order.

19. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1, and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each

month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period; and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage not offset by counter-drainage, and encourage future development.

It is the intention—*purpose and* policy of the Corporation Commission of the State of Oklahoma in issuing this order to promulgate rules and regulations as authorized and directed by the laws of the State of Oklahoma governing production of natural gas in order to prevent waste, providing a uniform method of determining a percentage of the well's capacity to produce, and for ratable taking of gas, in order to protect the interests of the public and all parties interested therein, and to give each operator an opportunity to produce currently his proportionate part of the gas and ultimately to produce approximately the amount of gas

originally underlying the surface of the land owned by him.

It is not the intention to limit or restrict the market demand for gas in the Guymon-Hugoton pool, but only to restrict production to market demand and prorate production equitably and fairly among the producers and owners.

It is further the intention of the commission that that portion of the Hugoton Field in the State of Oklahoma be referred to as the Guymon Hugoton Pool.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;

Townships Two (2), Three (3), and Four (4) North, Ranges Twelve (12) to Eighteen (18) East; and

Townships Five (5) and Six (6) North, Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian,

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above

described shall be drilled in the manner and according to the pattern herein described.

The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled to points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. *Allocation Formula*—A formula shall be, and is hereby adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. *Acreage Factor*— (a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. Before any unconnected well shall be granted an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the

end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) *Deliverability Factor—Pressure*—The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained

at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72 hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Farenheit and a base pressure of two pounds (2#) above atmosphere assumed to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = \frac{R \ (P^2 - Pd^2) \ .85}{(P^2 - Pw^2)}$$

Where D —Deliverability
R —Observed producing rate
P —Shut-in pressure of the well, pounds absolute
Pd—Deliverability standard pressure, converted to pounds absolute
Pw—Working well-head pressure at rate R, pounds absolute.

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered in connection with the average relationship between the estimated capacity to produce and deliverability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable shall be made retroactive to the date when the well was first entitled to an allowable.

(b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conseravtion Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representa-

tive present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. *Well Allowables*—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Aereage factor as used in this order shall mean the number of communitized acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. *Allowable Periods—Hearings*—There are hereby established two market demand periods for each year, one beginning April 1st and ending September 30th and the other beginning October 1, and ending March 31st, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nomina-

tions and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. *Underproduction and Overproduction*—All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be cancelled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be cancelled.

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchaser and ratable

taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA
REFORD BOND, *Chairman,*
RAY O. WEEMS, *Vice-Chairman,*
——— ———, *Commissioner.*

Attest:
TOM. MCMURRAY,
Secretary. [SEAL.]

Leave is hereby granted to file the foregoing Orders In Cause #32,123 as a part of the Record thereof this 1st May, 1947.

THURMAN S. HURST,
Chief Justice.

APPENDIX "B"

[Stamp:] Filed in Supreme Court of Oklahoma Feb. 18, 1947. Andy Payne, Clerk.

Order Correcting Opinion.
See Order Attached.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32123

REPUBLIC NATURAL GAS COMPANY, a corporation, Plaintiff in Error,

vs.

STATE OF OKLAHOMA, Corporation Commission of the State of Oklahoma, and Peerless Oil and Gas Company, a corporation, Defendants in Error

SYLLABUS

1. S. L. 1913, Ch. 198, Sec. 3 (52 O. S. 1941, 233) providing for the ratable taking of gas from a common re-

servoir or source of supply, is not in irreconcilable conflict with, or superseded by the provisions of S. L. 1915, Ch, 197 (52 O. S. 1941, 236-47) prohibiting waste of natural gas, and was not repealed by the enactment of said 1915 Act.

2. Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void.

3. Record examined, and held that the order of the Corporation Commission requiring Republic Natural Gas Company to take ratably from a well of Peerless Oil and Gas Company producing from the same common source of supply, or to cease the production of gas from said common source of supply through its own wells, was not arbitrary or beyond the jurisdiction of the Commission.

APPEAL FROM AN ORDER OF THE CORPORATION COMMISSION OF OKLAHOMA

Affirmed: Rainey, Flynn, Green and Anderson, Oklahoma City; Robert C. Foulston, George Siefkin, Wichita, Kansas.

For Plaintiff in Error: Ross Rizley, of Guymon of counsel; Richardson, Shartel, Cochran & Pruet, Oklahoma City; Floyd Green, Attorney for Corporation Commission.

For Defendants in Error: Earl Foster, Oklahoma City, Amicus Curiae.

OSBORN, *J*:

This is an appeal by Republic Natural Gas Company from an order of the State Corporation Commission, entered on January 10, 1945, requiring Republic to take gas ratably from a well of Peerless Oil and Gas Company in the Hugoton Gas Field in Texas County. In this court on such appeal Republic assails the validity of the order,

and of the statutes upon which it is based, upon various grounds hereinafter more fully stated.

Peerless, in this court, moves to dismiss the appeal on the ground that Republic, by making a tender for sale of gas produced from its leases in the Hugoton field, has recognized the validity of the statutes and the previous orders made by the Commission governing the producing and taking of gas from the Hugoton field and is, therefore, estopped now to deny the right of the Commission to make the present order, and for the further reason that no motion for a new trial was filed before the Corporation Commission within three days after the order involved in this appeal was entered.

We see nothing in the tender of gas made by Republic which estops or precludes it from asserting the invalidity of the order appealed from, or of the statute, if it may be so construed as to authorize such order. In the previous orders of the Commission governing the production and taking of gas from the Hugoton field the amount of gas to be produced from the wells in that field to supply the market demand was fixed and allocated with as much certainty as the Commission was able to do so, but neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own. Recognition of the Commission's right to make such orders and the production and sale of its gas thereunder in no way recognizes the right of the Commission to require it to take gas from the wells of the other producers.

Nor was the filing of a motion for new trial necessary to preserve to Republic the right of appeal. Holzierlein v. State —— Okla. ——, 172 P. 2d 1007.

The motion to dismiss is denied.

Proceeding now to consider the appeal on its merits, we briefly summarize the facts established by the evidence adduced before the Commission, upon which its findings and order were predicated. From the evidence it appears that the Hugoton Gas Field, not yet fully defined, covers a territory some 150 miles in length and 50 miles in width, extending from the southern part of the State of Kansas into Oklahoma and Texas, and possibly into Colorado

and New Mexico; that practically all of Texas County, Oklahoma, is embraced within the area of the field, which produces enormous quantities of gas far in excess of the market demand therefor; that at the time of the hearing before the Commission some 100 wells had been drilled into said field in Oklahoma, and that numerous wells had been drilled into it in the southern part of Kansas; that Republic had drilled some 92 wells in the Kansas Portion of the field and some 38 in the Oklahoma portion, and that additional wells were being drilled into the field in considerable numbers; that Republic, under contract with two pipe lines supplying gas for public consumption, one of which is within the State of Oklahoma, had constructed a pipe line gathering system of large size extending from its main outlet in the state of Kansas into Texas County, Oklahoma, whereby a portion of the production from its wells was transported to its markets in Oklahoma and Kansas; that by its principal contract it was required to maintain an open flow of gas production of more than four times in excess of the daily needs of the purchaser, and that Republic had available a supply of gas largely in excess of such requirement. It further appeared that there was no connection through stock ownership or otherwise between Republic and the pipe line outlets purchasing its gas. Republic drilled its first wells in Texas County, Oklahoma, in 1937, and has since that time been continuously engaged in the drilling of additional wells and in extending and enlarging its pipe line system to take care of the production from such wells. It has at no time held itself out as, or purported to be, a common purchaser or common carrier of gas, nor has it transported gas from any wells other than its own, except that under request of the Petroleum Administrator for War, it carried in its pipe lines, free of charge, gas from certain producing wells which the Petroleum Administrator required it to transport as a pre-requisite to permitting it to drill additional wells of its own. It also transports the gas of its royalty owners under its leases, which require it to pay as royalty 1/8 of the proceeds of the sale of gas.

The well of Peerless is located in Section 14, Township 6 North, Range 15 East, in the northern part of Texas

County. Under previous orders of the Commission only one well could be drilled upon each section. The Peerless well was completed as a producer on April 28, 1944, and produces gas in commercial quantities. It is almost surrounded by wells owned and operated by Republic which, according to the testimony of all the expert witnesses who testified on the subject, are draining from under the Peerless lease large quantities of gas which could be produced from it, and for which Peerless and its royalty owners would receive payment if such gas could be marketed by Peerless. For the gas so drained from under the Peerless lease by the surrounding wells Peerless and its royalty owners, of course, receive nothing, the revenue derived therefrom, which is not susceptible of definite ascertainment or apportionment, being received by Republic and the royalty owners upon whose leases its surrounding wells are located. From the evidence it appears that all of the gas production from the wells in the Hugoton field in Oklahoma is from the same common source of supply, and that to a certain extent the lease upon which the Peerless well is located is, therefore, drained by other wells in the field, but that such drainage by the nearby wells of Republic, which are much closer to the Peerless well than any other wells in the field.

From the evidence it appears that the present needs of Republic do not require the full capacity of its pipe line gathering system, and that a line of said system 8 inches in diameter crosses Section 14, upon which the well of Peerless is located, a short distance from said well. It also appears that Republic does not take from its producing gas wells any gas in excess of its determined allowable, as fixed by the Corporation Commission.

The Corporation Commission, after a full hearing, found the Republic had drilled numerous wells in the Hugoton Field in Oklahoma; that it had constructed pipe lines from these wells to its main pipe line, which main pipe line extended some 25 or 30 miles to a connection in Kansas, where it sold its gas to a common purchaser and common carrier of gas, and that it also sold a part of its gas to another common purchaser, the Cities Service Gas Company, at a point within the State of Oklahoma; that one of its

gathering lines across the land upon which the Peerless well was drilled, and that Republic had several wells on leases adjoining the land on which the Peerless well was drilled, which were draining gas from under the land covered by the Peerless lease, and that the production of natural gas in the Hugoton field was in excess of market demand.

The Commission found that Republic was a common purchaser of natural gas in the Hugoton field; that it was a common carrier of natural gas in said field, and further found that its taking of gas from the Hugoton field was not for the purpose of developing a gas and oil field, or operating oil wells or for the purpose of its own domestic use, and that it was therefore its duty, under S. L. 1913, Ch. 198, Sec. 3, (52 O. S. 1941, Sec. 233), to take ratably from Peerless, and that it had refused to do so.

By its order it required Republic to make connection with the Peerless well; that Peerless should lay a line from its well to Republic's line at some point designated by Republic, in Section 14, upon which the Peerless well was located; and that if it failed to make such connection and take gas from the Peerless well within a reasonable time after Peerless had constructed its line, as aforesaid, Republic should no longer be permitted to produce any of its wells located in the Hugoton Gas Field, in Oklahoma. It required Republic and Peerless to determine and agree upon the terms and conditions of the taking of the gas of Peerless by Republic, and provided that in the event they could not reach an agreement they could make further application to the Commission for an order fixing such terms and conditions, and the Commission retained jurisdiction for that purpose.

Republic contends that the finding that it was a common purchaser of gas and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or common purchaser, or had ever offered to purchase gas from, or carry gas for any other person or the public generally.

We think it unnecessary to pass upon this contention, since from the record it clearly appears that the finding of

the Commission that 52 O. S. 1941, sections 232 and 233, being sections 2 and 3 of Ch. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well.

52 O. S. 1941, sections 232 and 233 read as follows:

Section 232.

"Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under the surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well."

Section 233.

"Any person, firm of corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms

as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas."

So far as we have been able to find that court has never been called upon to construe and apply the provisions of these sections. However, we have had occasion to consider similar situations under other conditions and other statutes. Oklahoma Natural Gas Corporation *v.* Corporation Commission, 161 Okla. 104, 17 P. 2d 488; Quinton Relief Oil & Gas Co. *v.* Corporation Commission, 101, Okla. 164, 224 P. 156. The language of Section 233 is plain and unambiguous. The evident purpose is to enforce ratable taking in accordance with the principles announced in Ohio Oil Co. *v.* Indiana, 177 U. S. 190. 44 L. Ed. 729, 20 Sup. Ct. 576. By the preceding section (52 O. S. 1941, 232) ratable taking is definind as the proportion which the natural flow of gas from the wells of one producer bears to the amount of the natural flow from the wells of the other owners producing from the same common source of supply or common reservoir.

The evidence before the Commission indisputably established that the gas from the Hugoton field by Republic was not taken for the purposes of developing a gas or oil field, or operating oil wells, or for its own domestic use, but was taken solely for the transportation and sale thereof to common purchasers and common carriers of gas in order that by such transportation and sale Republic might derive a profit, such profit being its sole source of income so far as the record discloses.

Republic does not contend that it is taking ratably from the Peerless well nor does it contend that its surrounding wells do not drain the Peerless well. It, in effect, concedes that it would be required to take ratably from the Peerless well if said section 233 was now in force and effect, but contends that the 1913 law of which said section is a part was superseded by S. L. 1915, Ch. 197, (52 O. S. 1941, sections 236-247).

Republic, in support of its contention that the 1913 Act was repealed and superseded by the 1915 Act, relies upon Application of Jackson, 179 Okla. 577, 66 P. 1101, and Sheridan Oil Co. *v.* Wall, 187 Okla. 398, 103 P. 2d 507. In Application of Jackson, supra, we held that Section 1, Art. 2, Ch. 26 S. L. 1909 providing for the prevention of waste of natural gas by shutting in and confining the gas until such time as it could be utilized for light, fuel, or power purposes, was superseded by Ch. 197, S. L. 1915, supra, for the reason that the latter Act plainly showed that it was intended as a substitute for the prior Act, but, in that case we said that the repeal only affects those provisions shown to have been substituted by later and more comprehensive provisions, and that the remaining provisions of the 1909 Act could be construed in harmony with the 1915 Act to effect the intention of the legislature on the subject of conservation.

In Sheridan Oil Co. *v.* Wall, supra, we held that Section 11581 O. S. 1931, relating to the plugging of oil wells under the supervision of the Chief Mine Inspector was superseded by Section 3671 O. S. 1931, which granted to the Corporation Commission exclusive jurisdiction over the plugging of oil and gas wells. We there held that there was an irreconcilable conflict between the two sections and that the section vesting the power in the Corporation Commission being a later enactment, it was evident that the legislature intended to confer upon the Commission power and authority to supervise the plugging of oil and gas wells unhampered by the prior law.

The decisions in the two cases cited do not support the contention of Republic. Examination of Ch. 198 S. L. 1913, supra, discloses that it was enacted primarily to enforce ratable taking and protect correlative rights. Ch. 197 S. L. 1915 was enacted primarily for the prevention of waste, and authorizes the Commission to enforce ratable taking not only to prevent waste but to protect the interests of the public, and of all having the right to produce from a common source of supply. 52 O. S. 1941, section 239.

While the 1915 Act contains provisions regulating the ratable taking of gas from a common source of supply by persons engaged in the business of purchasing and selling gas and making such persons common purchasers, it is evi-

dence that the above quoted provisions of the 1913 law go further and require one who is engaged in the business of producing, transporting and selling gas to take ratably from other producers from the same common reservoir who have no outlet for their production, regardless of whether the party so transporting and selling his own gas be a common carrier or common purchaser of gas from that reservoir.

In Champlin Refining Co. *v.* United States, — U. S. —, 91 L. Ed. 9, 67 Sup. Ct. Rep. 1, the Supreme Court of the United States held that under section 19(a) of the Interstate Commerce Act, the Interstate Commerce Commission would lawfully require the Champlin Refining Company to furnish information as provided in said section, although it was not a common carrier or common purchaser, but transported only its own products through its pipe line from one state to another. This holding by the Supreme Court was based upon a provision in the Interstate Commerce Act that the term common carrier as used therein included all pipe line companies. This case supports the contention of Peerless, upheld by the Corporation Commission that the above quoted sections of the 1913 Act extended the obligation to take ratably to include another class besides common purchasers and common carriers. No similar provision is contained in the 1915 Act, nor is such provision in irreconcilable conflict with anything therein contained.

It is also significant that both the 1913 Act and the 1915 Act were brought forward in the 1921 Code, the 1931 Code, and the 1941 Code, so that it is apparent that the legislature in adopting the 1941 Code did not consider the 1913 law superseded by the 1915 law.

It follows that under Section 3 of the 1913 law above quoted the Commission could require the Republic to take gas ratably from the Peerless well, by ordering it to take from the Peerless well the same proportion of gas which it was taking from its own wells having substantially the same natural flow, or in the alternative, desist from selling gas from its own producing wells.

In support of its contention that if the 1913 law was not superseded by the 1915 law, the 1913 law is unconstitutional as depriving it of its property without due process of law,

Republic relies upon Texoma Natural Gas Co. *v.* Railroad Commission of Texas, 59 Fed. 2d 750, and Thompson *v.* Consolidated Gas Utilities Co., 300 U. S. 55, 81 L. Ed. 510, but in each of those cases the Conservation Act stricken down as unconstitutional, was enacted long after the parties who were there required to take gas from the wells of others had entered the state and made contracts for the production and purchase of natural gas. This fact distinguishes them from the instant case, and in our judgment, deprives them of controlling force.

In the instant case the record discloses that both the 1913 and 1915 Acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state and engaged in such business and entered into its various contracts. Having entered this state and obtained the privilege of conducting its business operations therein when said laws were in full force and effect, it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, 42 Sup. Ct. Rep. 440.

In that case the Supreme Court, passing upon a similar contention held:

> "A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in Pipe Line Cases, 234 U. S. 548, 561, in a single sentence, saying: 'So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid.'
>
> There is nothing in the nature of such a constitutional right as is here asserted to prevent its being waived or the right to claim it barred, as other rights may be, by deliberate election or by conduct inconsistent with the assertion of such a right. Pierce *v.* Somerset Railway, 171 U. S. 641, 648; Wall *v.* Parrot Silver & Coper Co., 244 U. S. 407, 411."

Republic contends that the order invades the field of federal cognizance and interferes with and burdens commerce between the states, contrary to Art. 1, section 8 of the Federal Constitution, citing Texoma Natural Gas *v.* Railroad Company of Texas, supra. Assuming without deciding that in some instances such an order might burden commerce between the states, there is here no showing that such effect will be produced by the order here appealed from. The evidence shows that Republic is delivering gas to a common purchaser within the State of Oklahoma. There is no showing that the order of the Commission will in any way operate to restrict, hamper or interfere with any interstate operations of Republic, or that the order may not be complied with by operations conducted solely within the State of Oklahoma.

Republic asserts that the order made by the Commission is arbitrary and beyond the jurisdiction of the Commission, and that its effect is to require Republic to become a common purchaser of gas in the Hugoton field.

We think these assertions are not sustained either by the law or by the facts.

By 52 O. S. 1941, section 239, the Corporation Commission is given the right to regulate the taking of natural gas from any common source of supply so as to protect the interests of all those having the right to produce therefrom. This provision vested in the Corporation Commission power and authority to enforce ratable taking under the provisions of section 233, supra. The record shows that the Commission had theretofore made a general order fixing allowables and governing the taking of gas from said field, and obviously the present order, made after notice and a full hearing, was for the purpose of correcting an inequality in the taking of gas from said field whereby the correlative rights of Peerless were being infringed. Under the evidence and the authority granted by section 233, supra, the order was justified and was not an arbitrary act of the Commission, nor beyond its power and jurisdiction.

Neither did the order require Republic to become a common purchaser, since it gave Republic a choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor,

or to shut in its own production from the same common source of supply. It was left free to choose either of these three methods of correcting the inequality in taking and the consequent infringement of the correlative rights of Peerless.

The order of the Commission is affirmed.

Hurst, C. J., Davison, V. C. J., Riley, Bayless, Welch, Corn, Gibson, and Arnold, JJ.: concur.

Filed in Supreme Court of Oklahoma, May 25, 1947. Andy Payne, Clerk

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32123

REPUBLIC NATURAL GAS COMPANY, a Corp., *Plaintiff in Error*,

vs.

STATE OF OKLAHOMA, et al., *Defendants in Error*

ORDER

It is ordered that the second paragraph of the syllabus in the above styled cause be corrected to read as follows:

> "Where a foreign corporation obtains permission to do business within the state of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, and applying alike to both domestic and foreign corporations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

Done by order of the conference this 24th day of March, 1947.

THURMAN S. HURST,
Chief Justice.

APPENDIX "C"

No. 32123

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPUBLIC NATURAL GAS COMPANY, a Corporation, *Plaintiff in Error,*

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation, *Defendant in Error*

PETITION FOR REHEARING

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March, 1947.

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No. 32123

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPUBLIC NATURAL GAS COMPANY, a Corporation, *Plaintiff in Error*,

versus

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation, *Defendants in Error*

PETITION FOR REHEARING

Comes now Republic Natural Gas Company, a corporation, plaintiff in error herein and petitions this Court to grant it a rehearing from the decree and judgment rendered by this Court on the 18th day of February, 1947, in this cause, affirming Order No. 17463, in cause No. 902 of the Corporation Commission of Oklahoma, entered on January 10, 1945, requiring plaintiff in error to take gas from a well of Peerless Oil and Gas Company in the Hugoton Gas Field in Texas County, Oklahoma.

As grounds for rehearing, plaintiff in error says that said decision and judgment is in conflict with controlling decisions to which the attention of the Court has not been called in this case, either in brief or oral argument, and is also in conflict with decisions which have been overlooked by this Court.

Plaintiff in error, in its petition in error and in its brief and oral argument herein, asserted that Chapter 198, Session Laws 1913, as construed and applied by the Corporation Commission denies it the equal protection of the law and deprives it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Sections 7 and 23 of Article 2 of the Constitution of the State of Oklahoma. In support of such contention plaintiff in error relied upon the cases of: Texoma Natural Gas Co. *v.* Railroad Commission of Texas, 59 Fed. (2d) 750, and Thompson *v.* Consolidated

Gas Utilities Co., 300 55, 81 L. Ed. 510, as being decisive thereof, In disposing of this contention, this Court held that:

> "Where a foreign corporation obtains permission to do business within the State of Oklahoma, and pursuant to such permission enters the state and produces and transports natural gas therein, it may not successfully contend that a statute, relating to its operations, in full force and effect at the time it obtained permission to do business within the state is unconstitutional, and that an order of the Corporation Commission made pursuant to authority granted by such statute is void."

As we construe the holding of this Court herein, it is that even though the state statute and the order of the Commission based thereon and appealed from in this case violates the rights of plaintiff in error guaranteed under the Federal Constitution, this plaintiff in error cannot raise such questions because the statute was enacted before plaintiff in error entered the state. In the two cases last cited above it so happened that the corporations entered the state before the enactment of the statute and the opinion herein concludes that such fact distinguishes those cases from the case at bar and makes them inapplicable. We respectfully submit that in so holding, this Court overlooked and failed to give effect to the rule well settled by more recent decisions of the Supreme Court of the United States:

> "* * * that a foreign corporation by seeking and obtaining permission to do business in a State does not thereby become obligated to comply with or estopped from objecting to any provision in the state statutes which is in conflict with the Constitution of the United States." Power Co. *v.* Saunders, 274 U. S. 490, 497.

Among other cases so holding are:

Hanover Insurance Co. v. *Harding* 272 U. S. 494, 507;
Frost Trucking Co. v. *Railroad Commission of California*, 271 U. S. 583, 594;
Connecticut General Life Ins. Co. v. *Johnson*, 303 U. S. 77, 82 L. Ed. 673;

Canadian Pacific Railway Co. v. *Sullivan*, 126 Fed. (2d) 433 (1942);
Phillips Petroleum Co. v. *Jenkins*, 297 U. S. 629, and

Quaker City Cab Co. *v.* Pennsylvania 277 U. S. 389, 400, 401, 48 L. Ed. 927, wherein the Supreme Court of the United States says:

> "It is established that a corporation, by seeking and obtaining permission to do business in a state, does not thereby become bound to comply with, or estopped from objecting to the enforcement of its enactments that conflict with the Constitution of the United States."

In Phillips Petroleum Co. *v.* Jenkins, supra, the Supreme Court of the United States said:

> "Arkansas might have refrained from enactment of statutes creating or authorizing organization of corporations and might have denied to foreign corporations admission to the State. But it may not enforce any part of the charter of a domestic corporation or any provision of its laws relating to admission of a foreign corporation that is repugnant to the Federal Constitution. If § 7137 is repugnant to the equal protection clause, it is without force as a part of the charter contract or otherwise."

All of the foregoing cases were decided subsequent to the case of Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, upon which this Court based its decision. If the Pierce case is not distinguishable from the later cases, it is in conflict therewith and must fall. However, we think it is clearly distinguishable in several respects. As was said by the Supreme Court of the United States with reference to the facts in the Pierce Case, the Oklahoma Constitution provides for a Corporation Commission with large powers of regulation and supervision over oil pipe and other transportation companies and that in 1909 there were enacted various statutes (now found in Title 52, Chapter 2, O. S. 1941) applicable to oil pipe lines. It is provided in said statutes that no corporation, except

as authorized therein, should have the right to engage in the business of transporting crude petroleum through pipe lines within the State, and that every corporation engaged in such business under the state law should be deemed a common carrier thereof, as at common law. These statutes also provide that before any corporation should be entitled to the provisions of the Act, it must file with the Corporation Commission an authorized acceptance of the provisions of the statutes and the Constitution of the State, and a plat showing the location and capacity of the company's pipe line (Similar statutes governing gas pipe lines are found in Title 52, Chapter 1, O. S. 1941).

The facts in the case further show that the Pierce Company had not only transported its own oil from the Cushing oil field to its refinery at Sand Springs, but had also transported oil for various other parties for hire, and had at one time procured from the Corporation Commission temporary exemption from its duties as a common carrier, pursuant to one of the provisions of the statute. The Republic Natural Gas Company, as shown by the record, and as set forth in the opinion of this Court, has never been a common carrier or a common purchaser of gas, It did not enter the State of Oklahoma as a pipe line company, and has never conducted its business as such by accepting the provisions of the above statute, nor exercised the privileges therein granted. It has simply carried on its business as a producer of gas with its necessary gathering lines wholly located within the gas field, and it has never accepted any privilege or benefit whatever under the Act of 1913.

The order of the Commission, based upon the 1913 Act, applied and attempted to be enforced against plaintiff in error in this case was made long after Republic Natural Gas Company entered the State. Therefore, the order of the Commission was the subsequent enactment of a law within the meaning of the Federal Constitution. Moreover, as held in Connecticut General Life Insurance Co. *v.* Johnson, supra:

> "A corporation which is allowed to come into a state and there carry on its business may claim, as an indi-

vidual may claim, the protection of the Fourteenth Amendment against a subsequent application to it of state law."

We respectfully submit that this Court should enter its order granting the rehearing herein, and upon rehearing should reverse the order of the Commission.

Respectfully submitted,

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March, 1947.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. ~~1496~~ 134.

REPUBLIC NATURAL GAS COMPANY, a corporation,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL & GAS COMPANY, a corporation, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS APPEAL.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 1496

REPUBLIC NATURAL GAS COMPANY, a corporation,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL & GAS COMPANY, a corporation, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS APPEAL.

Pursuant to Rules 7(3) and 12(3) of the Rules of this Court, Appellant files this, its brief in opposition to Appellees' Motion to Dismiss.

I.

The Judgment Appealed From Is "Final".

Appellees concede the judgment below is final by Oklahoma law, but contend it lacks the finality requisite for appealability under Section 237(a) of the Judicial Code (28 U. S. C. A. §344a, 8 F. C. A., Title 28, §344a).

The controversial issue in the instant proceeding was whether Republic could be compelled, against its will, to purchase and transport gas from the Peerless well. Paragraph I of the Commission's order, affirmed by the Oklahoma Supreme Court, determinatively adjudicates this issue:

> "IT IS THEREFORE ORDERED . . . 1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well . . . and to make necessary connection . . . and in event of failure of respondent to do so, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field."

Undeniably that is a final judgment. It terminates the litigation on the merits, and leaves nothing further to be determined or done. That it is not enforceable by ordinary execution is immaterial,[1] nor is its finality jeopardized by the inclusion of a specified penalty for noncompliance.[2]

Appellees assert (Motion to Dismiss, p. 4), however, that finality is postponed by the reservation, in paragraph 2 of the judgment, of jurisdiction subsequently to determine "the terms and conditions of taking" *in event* the adversaries are unable to agree. That portion of the judgment upon which Apellees rely provides:

---

1. *Old Colony Trust Co. v. Comm'r.*, 279 U. S. 716, 725, 73 L. ed. 918 (1929); *cf. Fidelity Nat. Bank & T. Co. v. Swope*, 274 U. S. 123, 132, 71 L. ed. 959 (1927).

2. *Wabash & Erie Canal Co. v. Beers*, 1 Black (U. S.) 54, 17 L. ed. 40 (1862); Ex parte *M. & M. R. R. Co.*, 2 Wall. (U. S.) 440, 17 L. ed. 860 (1865).

"IT IS THEREFORE ORDERED . . . 2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well *shall* be determined and agreed upon by and between applicant and respondent; and *in the event* said parties are *unable* to agree, applicant and respondent are hereby granted the right to make *further application* to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction for such purpose." (Italics ours)

It will be observed the command that the parties themselves agree upon the terms of ratable taking is a definitive order, mandatory and unqualified. The litigants are given no "option". Paragraph 1 of the judgment orders Republic "to take gas ratably" from the Peerless well, and paragraph 2 *requires* the litigants to agree among themselves upon the terms of taking.

What, then, is left "to the judicial discretion of the trial court"?[3] The judgment concludes the litigation — "there is nothing more to be decided".[4] No further proceedings of any type, characterized by "judicial discretion" or otherwise, are contemplated. Hence, the judgment satisfies fully the test announced by this Court in *Georgia Railway & Power Co. v. Decatur*, 262 U. S. 432, 436, 67 L. ed. 1065 (1923), cited by Appellees at page 4 of their Motion to Dismiss:

". . . the judgment or decree 'must terminate the litigation between the parties on the merits of the case, so that, if there should be an affirmance here, the court below would have nothing to do but to

3. *Georgia Railway & Power Co. v. Decatur*, 262 U. S. 432, 436, 67 L. ed. 1065 (1923).

4. *Richfield Oil Corp. v. State Board of Eq.*, 329 U. S. 69, 91 L. ed. (Adv. Sheet) 123, 125-126 (25 Nov., 1946).

> execute the judgment or decree it had already rendered."

Appellees cite *Hunter v. McHugh*, 320 U. S. 222, 88 L. ed. 5 (1943)[5] for the proposition that, "Until an order shall have been entered . . . fixing the terms and conditions of the taking of natural gas . . ." (Motion to Dismiss, p. 4), review by this Court is premature.

This argument misconceives the nature of the judgment appealed from. As already pointed out, the final judgment below is not conditioned upon precedential determination by the Commission of the terms of ratable taking. The judgment is effective *immediately* without further act or order of the Commission or Oklahoma Supreme Court. If finality must await the Commission's pronouncement of the terms of taking, it is highly unlikely the instant litigation will ever become concluded inasmuch as the Commission will never consider this problem unless the parties fail to comply with the order that they themselves decide upon the terms of taking. Certainly the Commission does not contemplate being called upon to arbitrate this issue:

> "The last and final question . . . how to effect ratable taking between these parties . . . is a matter that this Commission should never be called upon to solve."[6]

Are Appellant's constitutional rights to be withheld in abeyance until the Commission passes upon a col-

5. But in the Hunter appeal, dismissed for want of a substantial federal question, the Commission's order had, after perfection of appeal to this Court from its affirmance by the Louisiana Supreme Court, been rescinded, leaving no specific application of the controversial statute for review, and arguably rendering moot the entire appeal.

6. Fifth paragraph, page 6, of the Commission's mimeographed order.

lateral issue it never expects to consider and has ordered the litigants themselves to solve?

Upon Appellees' thesis, Appellant is required, in order to perfect and protect its right of appeal, to defy an affirmative order of the Commission and refuse to agree upon any terms of taking —for to agree upon terms would clearly estop Appellant from proceeding further to assail the judgment in which it thus acquiesed. And, in this connection, we call attention to the fact that the Commission's reluctant consent to consider the "terms of taking" issue is operative only if the parties are *unable* to agree. If Appellant simply *refused* to agree — as, upon Appellees' postulate, it must in order to effectuate its prerogative of seeking this Court's protection of its constitutional rights — the judgment would appear to require the shutting in of Appellant's wells, rather than to solicit further administrative consideration of the terms of taking.

The judgment appealed from orders Republic to take gas ratably from the Peerless well. It orders Republic and Peerless to agree upon the terms of such taking. It is a complete, final judgment, neither requiring nor contemplating further Commission action in order to render it immediately effective. If that judgment be affirmed by this Court, nothing will remain to be done by either the Commission or the Oklahoma Supreme Court. The judgment is self executing. Especially since the reservation by the Commission of jurisdiction to entertain a "further application", in event its final order proves unworkable, adds nothing to the power possessed by it even in the absence of such recital in the order, we submit the judgment, as affirmed, is a "final" one. That *new* proceedings may subsequently be instituted by either party cannot deny finality to the decree culminating the *present*

litigation. A latent power to revise, there being no application pending which invites reconsideration by the Commission, is no deterrent to finality:

> "The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment . . . Such latent powers of state courts over their judgments are too variable and indeterminate to serve as tests of our jurdiction. Our test is a practical one."[7]

As a matter of fact, it is not essential that an order, to be "final", constitute "the ultimate judgment or decree completely closing up a proceeding".[8] Nor is it invariably fatal to finality that something remains to be done in order to conclude the litigation.[9] The authorities display no rigid adherence to so mechanical a test:

> "But even so circumscribed a legal concept as appealable finality has a penumbral area . . . Considerations of English usage as well as those of judicial policy would readily justify an interpretation of 'final judgment' so as to preclude reviewability here where anything further remains to be determined by a State court, no matter how dissociated from the only Federal issue that has finally been adjudicated by the highest court of the State . . .

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7. *Market Street R. Co. v. Railroad Comm. of Cal.*, 324 U. S. 548, 551-552, 89 L. ed. 1171 (1945).

8. *United States v. 243.22 Acres of Land*, 129 F. (2d) 678, 680 (C. C. A. 2, 1942); *Kasishke v. Baker*, 144 F. (2d) 384, 386 (C. C. A. 10, 1944).

9. *Bronson v. La Crosse & M. P. R. Co. et al.*, 2 Black (U. S.) 524, 17 L. ed. 359 (1863); *Gulf Refining Co. v. United States*, 269 U. S. 125, 70 L. ed. 195 (1925).

> "Unfortunately, however, the course of our jurisdictional history has not run as smoothly as such a mechanical rule would make it."[10]

Certainly it is not material that further orders remain necessary in order to enforce or carry into effect the state court judgment.[11]

Yet here, in the case at bar, the judgment under review *is* the ultimate judgment of the court below. It *does* completely terminate the proceeding. *Nothing* remains to be done in order to conclude the litigation, or to make effective the judgment of the Oklahoma Supreme Court. There is, here, merely a latent power in the Commission to consider a "further application" in event, but only in event, the final judgment already rendered is not complied with by the litigants.

Whether the reserved power be considered equivalent to latent jurisdiction to entertain a *new* proceeding, or, instead, to issue further orders to enforce or achieve effective operation of the existing order in the *instant* proceeding, its exercise is not a condition precedent to immediate execution of the present judgment, and, therefore, does not defer finality.

In calculating the effect of the Commission's declared reservation of jurisdiction to entertain additional applications, it is pertinent to observe that the judgment below first resolves the federal issue by determining Appellant is subject to the Commission's authority under the controversial statutes, and, then, *simply orders Appellant to comply with the legislative enactment.* That portion of

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10. *Radio Station WOW, Inc. v. Johnson*, 326 U. S. 120, 124-125, 89 L. ed. 2092 (1945).

11. *Knox Nat. Farm Loan Asso. v. Phillips*, 300 U. S. 194, 81 L. ed. 599 (1937); *In re Casaudoumecq*, 46 F. Supp. 718 (S. D. Calif., 1942).

the judgment upon which Appellees rely as proscribing finality is, in fact, a final order, couched in the *verbatim* terminology of the statute, commanding Appellant to conform to the statutory mandate:[12]

> "Any person, firm or corporation . . . shall take ratably from each owner of the gas in proportion to his interest in said gas, *upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing;* provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas." (Italics ours)

How, we respectfully submit, can a definite order directing Appellant forthwith to take gas ratably in accordance with the terms of the statute, be construed as anything other than a complete, final judgment?

It might also be noted that ascertainment of the "terms and conditions of such taking" presents no problem.

The statutes themselves, and even the instant Oklahoma Supreme Court judgment and Commission order, prescribe the formula for "ratable taking". Application thereof to the present litigants, in view of "open flow" and "deliverability" tests already taken and well "allowables" heretofore announced by the Commission (see paragraph 1, page 3, typewritten opinion herein of the Oklahoma Supreme Court), would be a mere ministerial undertaking:

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12. Laws 1913, Ch. 198, p. 440, §3 (52 Okl. St. Ann. §233, p. 500) —quoted at page 4 of the mimeographed Commission order.

". . . the amount of gas each owner may take therefrom [from the 'common reservoir of gas'] shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month."[13]

". . . any person . . . may take therefrom [from any 'common source of supply of natural gas'] only such proportion of the natural gas . . . as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply. . ."[14]

". . . ratable taking is . . . the proportion which the natural flow of gas from the wells of one producer bears to the amount of the natural flow from the wells of the other owners producing from the same common source of supply or common reservoir."[15]

". . . there should be a ratable production and a ratable taking of natural gas from the well owned by the Peerless Oil and Gas Company in proportion to those owned by the Republic Company, in order . . . to carry out the provisions of the statutes hereinabove mentioned."[16]

The cost element would assuredly be controlled by the going field price. In addition, by order promulgated 9 December 1946 in Cause Number 19514, the Commission set a minimum well-head price (in excess of going field price) for all gas produced from the Hugoton

13. Laws 1913, Ch. 198, p. 440, §2 (52 Okl. St. Ann. §232, p. 499).
14. Laws 1915, Ch. 197, §4 (52 Okl. St. Ann. §239, p. 503).
15. Paragraph 1, page 8, typewritten opinion of Oklahoma Supreme Court in case at bar.
16. Paragraph 4, page 6, mimeographed opinion of the Commission in the instant proceeding.

Field in Texas County, Oklahoma, [17] which price would govern the present litigants.

Therefore, it is a practical impossibility that the parties hereto could fail to "agree upon the terms and conditions of such a taking" were the instant judgment affirmed, or that, if a further application to the Commission were to require its determining the issue, anything more than mathematical computation would be necessitated.

In any event, regardless of difficulties which may *hereafter* arise if the litigants fail to agree upon ratable taking terms, there is, at this time, a final, complete, immediately effective and enforceable judgment; and its appealability cannot be affected by contingencies which can materialize only if, and after, the present final judgment is not complied with. A judgment may not be deprived of finality by controversies attendant only upon noncompliance with its definite command.

In passing, it should be noted that the judgment this Court reviewed on writ of error in *Pierce Oil Corporation v. Phoenix Refining Co.*,[18] possessed all the inconclusive characteristics upon which Appellees now rely in attributing infinality to the instant judgment, which assumes significance here in view of this Court's obligation

17. "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma at a price, at the well-head, of less than 7¢ per thousand cubic feet of natural gas, measured at a pressure of 14.65 pounds absolute pressure per square inch." This order is now under appellate attack, but will control unless vacated by judicial order.

18. 259 U. S. 125, 66 L. ed. 855 (1922), affirming 79 Okla. 36, 190 Pac. 857 (1920). It is this decision upon which the final judgment herein of the Oklahoma Supreme Court is bottomed.

to disavow appellate jurisdiction of non-final judgments without motioned prompting from litigants:[19]

> "The order of the Corporation Commission only required the Pierce Oil Corporation and Clay Arthur Pierce to receive and transport the oil offered *so long as there was space available in their pipe line.*" (190 Pac. at 858; our italics)
>
> " . . . the Corporation Commission ordered the defendant Pierce Oil Corporation to carry oil offered to it by the Phoenix Refining Company from the producing wells of the Phoenix Refining Company . . . and to carry *such other oil as the Phoenix Refining Company may have to offer* so long as space in the line was available." (190 Pac. at 857; our italics)
>
> " . . . it was ordered to carry such oil as the Phoenix Company was then producing in the Cushing field, and such other oil as the Pierce Company might have available space or capacity to transport in its line, from the Cushing Field to Sand Springs. *Because the evidence was not deemed sufficient, no order was made as to rates.*" (259 U. S. at 126-127; our italics)

There is, we submit, another sound basis for according finality to the present judgment, even assuming, *arguendo,* the proceeding at bar may be denominated incomplete because of the Commission's jurisdiction to entertain further applications seeking administrative decreement of the terms of ratable taking.

We are not here concerned with a judgment *in vacuo* which merely determines general principles governing, but whose operative impact upon the unsuccessful liti-

19. For example, *Arnold v. United States*, 263 U. S. 427, 68 L. ed. 371 (1931).

gant will not be felt until termination of, further proceedings in the same cause (however ineluctably those general principles may ordain the litigation's *ultimate* result). The instant order is not comparable to a judgment decreeing the fact of a defendant's liability, but requiring no payment until subsequent ascertainment by a jury of the quantum of damages.[20]

Here, the judgment sought to be reviewed is *immediately* operative. It orders Appellant forthwith to take gas ratably from the Peerless well, and prohibits Appellant's producing gas from its own wells unless it does so. Nor is the mandate conditioned upon the litigants' first determining the terms of such taking, much less upon any further proceeding before the Commission in event voluntary accord is not achieved. *Instanter* Peerless lays a short line from its well to Republic's gathering system, Republic must surrender part of its market and dedicate its gathering facilities to accepting and carrying gas from the Peerless well. Appellant is commanded to accept gas from the Peerless well at once, irrespective of whether or not the parties have reached an accord upon terms of taking.

Note Appellant is required to designate the connection point "immediately" (Order, par. 1). It is ordered to make the necessary connection and to take gas ratably from the Peerless well, *not* following an agreement upon terms, but:

> ". . . as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission." (Order, par. 1)

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20. See, for example, *Bruce v. Tobin*, 245 U. S. 18, 62 L. ed. 123 (1917), relied on by Appellees at page 4 of their Motion to Dismiss—and representative of Appellees' authorities.

And observe the penultimate paragraph preceding the Commission's "Findings":

> If the price for this gas or the manner of taking cannot be agreed upon between the parties, this matter should be determined at a hearing at the request of either party, *but in the meantime a connection should be made on the Republic line.*" (Our italics)

Therefore, the instant judgment must be governed by the settled rule that an order depriving a litigant of specific property possesses appealable finality even though the terms of taking are deferred for subsequent determination. [21]

Applicability here of the foregoing authorities is revealed by the following elucidation of their *ratio decidendi* by this Court in *Radio Station WOW, Inc. v. Johnson, supra:*

> "In short, the rationale of those cases is that a judgment directing immediate delivery of physical property is reviewable and is to be deemed dissociated from a provision for an accounting even though that is decreed in the same order . . . " (326 U. S. at 126)
>
> ". . . if appellants had to wait, they would be subjected to irremediable injury, for execution had been awarded." (326 U. S. at 125, ft 'n. 2)

Here, as just noted, the judgment below compels the immediate surrender by Appellant of part of its gathering line capacity and of part of its market for its own

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21. *Radio Station WOW, Inc. v. Johnson, supra,* ft'n. 10, 326 U. S. 120; *Carondelet Canal and Navig. Co. v. Louisiana,* 233 U. S. 362, 58 L. ed. 1001 (1914); *Kashishke v. Baker,* 144 F. (2d) 384 (C. C. A. 10, 1944); *United States v. 243.22 Acres of Land,* 129 F. (2d) 678 (C. C. A. 2, 1942); *In re Casaudoumecq,* 46 F. Supp. 718 (S. D. Calif., 1942).

gas. Whatever the terms and conditions of ratable taking may prove to be, now, *instanter*, Appellant must accept and carry Peerless gas. Immediately the impact of the judgment strikes Appellant with a force unabated by postponing determination of the terms and conditions of taking.[22] Hence, it is submitted the "specific property" principle should be applied to the judgment in the case at bar.

It is submitted the Oklahoma Supreme Court's judgment, ordering Appellant forthwith to accept and carry in its gathering lines gas from the Peerless well, is appealably final notwithstanding the redundant recognition in the Commission's decision of its latent jurisdiction to entertain subsequent, separate applications in event, but only in event, the litigants fail to comply with the present order.*

II.

The Oklahoma Supreme Court Judgment Is Not Sustainable Upon a Non-Federal Ground.

In their motion to dismiss, Appellees contend the validity of the statutes and of the Commission's order was not passed upon by the Oklahoma Supreme Court; that

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22. And immediately Appellant transports Peerless gas for hire across state lines, it becomes exposed to the hazardous task of resisting Federal Power Commission assertions of jurisdiction under the Natural Gas Act: *cf. In re Billings Gas Company, et al.*, 2 F. P. C. 288, 35 P. U. R. (n. s.) 321 (1942); *Interstate Natural Gas Co. v. F. P. C.*, 156 F. (2d) 949 (C. C. A. 5, 1946), *affg.* 3 F. P. C. 416, 48 P. U. R. (n. s.) 267, *aff'd. by this Court* in unreported opinion delivered 16 June 1947; and *In re Fin-Ker Oil and Gas Production Co.*, Docket No. G-352, F. P. C. opinion No. 149, decided 20 May 1947.

* In event this Court should sustain the Motion to Dismiss, Appellant would appreciate an indication as to whether such order were premised upon infinality of the present judgment, inasmuch as dismissal on this ground would not preclude the possibility of subsequent appellate relief.

the judgment merely held Appellant was estopped to litigate this issue; and that a judgment grounded upon estoppel presents no appealable federal question.

Under division VIII of our Jurisdictional Statement we demonstrated the Oklahoma Supreme Court did in fact adjudicate validity of the statutes and order despite Appellant's timely and specific assertion that they were repugnant to the United States Constitution.

Thus, Appellant's contention, originally raised by answer before the Corporation Commission, assailed the statutes and the order sought by Peerless as:

> " . . . arbitrary, confiscatory, unreasonable, and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States."[23]

Yet syllabus 3 of the Oklahoma Supreme Court's opinion expressly holds the Commission's order "was not arbitrary or beyond the jurisdiction of the Commission"; and the following language appears on the decision's final page:

> "Under the evidence and the authority granted by section 233, supra, the order was justified, and was not an arbitrary act of the Commission, nor beyond its power and jurisdiction."

Furthermore, in rejecting Appellant's protestation that the statutes could not constitutionally apply to it, or authorize the Commission's order, because Appellant was not a common carrier or common purchaser of gas, the Oklahoma Supreme Court held:

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23. Answer of Republic Natural Gas Company, R. 63 (Okla. Sup. Ct. Tr. 55-A).

"... the finding of the Commission that 52 O. S. 1941, sections 232 and 233, being sections 2 and 3 of Ch. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of opinion that *by said sections the Commission was empowered to require Republic to take ratably from the Peerless well.*" (Opinion, p. 7; our italics)

"... the above quoted provisions of the 1913 law go further and require one who is engaged in the business of producing, transporting and selling gas to take ratably from other producers from the same common reservoir who have no outlet for their production, *regardless of whether the party so transporting and selling his own gas be a common carrier or common purchaser of gas from that reservoir.*

"In Champlin Refining Co. v. United States .... U. S. ...., 91 L. Ed. 9, 67 Sup. Ct. Rep. 1, the Supreme Court of the United States held that under section 19 (a) of the Interstate Commerce Act, the Interstate Commerce Commission *could lawfully require* the Champlin Refining Company to furnish information as provided in said section, *although it* was not a common carrier or common purchaser, but *transported only its own products through its pipe line* from one state to another... *This case supports the contention of Peerless, upheld by the Corporation Commission ...*" (Opinion, p. 10; italics ours)

It is manifest that by the quoted language aforesaid, the Oklahoma Supreme Court, *without reference to or consideration of the doctrine of estoppel,* held, upon the authority of the Champlin Refining Co. decision, that the Oklahoma statutes and the Commission's orders were lawful and valid.

In any event, even were the judgment below predicated solely upon estoppel, it would nevertheless be reviewable by this Court.

It is, of course, unessential to appealability that a judgment deny constitutional rights in express terms.[24] Thus, in *Ancient Egyptian Arabic Order N. M. S. v. Michaux* (279 U. S. at 745) it is said:

> "And it is our province to inquire not only whether the right was denied in direct terms, but also whether it was denied in substance and effect by interposing a nonfederal ground of decision having no fair support."

And see *Norris v. Alabama* (294 U. S. at 589-590):

> "When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, then that examination must be made . . . "

Furthermore, in any case the non-federal ground for decision must be substantial in order to render the judgment immune to review by this Court.[25] Even though constitutional objections be denied upon non-federal grounds, it is the province of this Court to inquire whether those grounds rest upon a fair or substantial basis; and if unsubstantial, this Court will afford relief

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24. *Norris v. Alabama*, 294 U. S. 587, 589-590, 79 L. ed. 1075 (1935); *Ancient Egyptian Arabic Order N. M. S. v. Michaux*, 279 U. S. 737, 745, 73 L. ed. 931 (1929); *El Paso & N. E. R. Co. v. Gutierrez*, 215 U. S. 87, 54 L. ed. 106 (1909); *Grand Rapids & I. R. Co. v. Osborn*, 193 U. S. 17, 48 L. ed. 598 (1904); *Columbia W. Power Co. v. Columbia Electric Street R. L. & P. Co.*, 172 U. S. 475, 487, 43 L. ed. 521 (1898).

25. *Broad R. P. Co. v. So. Carolina ex rel. Daniel*, 281 U. S. 537, 74 L. ed. 1023 (1930), *aff'd.* 282 U. S. 187, 75 L. ed. 287; *Ancient Egyptian Arabic Order N. M. S. v. Michaux, supra*, 279 U. S. 737; *Union Pacific R. Co. v. Public Service Comm.*, 248 U. S. 67, 63 L. ed. 131 (1918); *Terre Haute & I. R. Co. v. Indiana ex rel. Ketcham*, 194 U. S. 579, 48 L. ed. 1124 (1904).

to the agrieved litigant.[26] See, for example, this language by Mr. Justice Stone in *Broad R. P. Co. v. So. Carolina* ex rel. *Daniel, supra* (281 U. S. at 540):

> "Whether the state court has denied to rights asserted under local law the protection which the Constitution guarantees is a question upon which the petitioners are entitled to invoke the judgment of this court. Even though the constitutional protection invoked be denied on non-Federal grounds, it is the province of this court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded. [Citations.]"

Finally, if the non-federal ground is so interwoven with a federal ground as not to be independent, or is not of sufficient breadth to sustain the judgment without consideration of the federal ground, its inclusion in the judgment does not preclude review.[27] As Mr. Justice Hughes wrote for this Court in *Norris v. Alabama, supra,* 294 U. S. at 590:

> "Thus, whenever a conclusion of law of a state court as to a federal right and findings of fact are so intermingled that the latter control the former,

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26. *Great Northern R. Co. v. Washington,* 300 U. S. 154, 165-168, 81 L. ed. 573 (1937); *Lawrence v. State Tax Comm.,* 286 U. S. 276, 282, 76 L. ed. 1102 (1932); *Norris v. Alabama, supra,* 294 U. S. 587; *Abie State Bank v. Bryan,* 282 U. S. 765, 774, 75 L. ed. 690 (1931); *Broad R. P. Co. v. So. Carolina* ex rel. *Daniel, supra,* 282 U. S. 537, 540; *Ancient Egyptian Arabic Order N. M. S. v. Michaux, supra,* 279 U. S. 737; *Union Pacific R. Co. v. Public Service Comm., supra,* 248 U. S. 131.

27. *State Tax Commission v. Van Cott,* 306 U. S. 511, 83 L. ed. 950 (1939); *Norris v. Alabama, supra,* 294 U. S. 587, 589-590; *Abie State Bank v. Bryan, supra,* 282 U. S. 765, 773; *El Paso & N. E. R. Co. v. Gutierrez, supra,* 215 U. S. 87; *Grand Rapids & I. R. Co. v. Osborn, supra,* 193 U. S. 17; *Citizens' Bank v. Parker,* 192 U. S. 73, 48 L. ed. 346 (1904); *Columbia W. Power Co. v. Columbia Electric Street R. L. & P. Co., supra,* 172 U. S. 475, 487.

it is incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured."

The instant issue is inextricably bound up with the problems discussed in the ensuing section of this brief: whether the acceptance by Appellant, a foreign corporation, of the privilege of transacting business in Oklahoma is alone sufficient to estop it from asserting the invalidity of statutes enacted before Appellant entered the state; whether Oklahoma could constitutionally impose such waiver of the privilege of contesting the statutes' validity as the price for permission to operate in that state; and whether, in any event, the Commission's order should not be considered subsequent legislation to which the estoppel doctrine is inapplicable.

If, as we contend and will presently demonstrate, mere acceptance by a foreign corporation of the privilege of doing business in Oklahoma does not entail submission to unconstitutional state statutes, or if the Commission's order must be treated as subsequent legislation, or if Oklahoma's privilege to exclude Appellant did not encompass power to exact from Appellant a waiver of its rights to object to the enforcement of unconstitutional statutes, then insofar as the Oklahoma judgment purports to rest upon estoppel as justifying the application to Appellant of the statutes and Commission order, it necessarily upholds the validity of such statutes and order, and deprives Appellant of its constitutional rights.

Under these circumstances, Appellant's prerogative to solicit this Court's appellate review of the judgment may

not be impugned merely because the Oklahoma Supreme Court chose to rely upon what, applied to other facts,[28] might be considered a non-federal ground of decision.

As a matter of fact, the very case upon which the Supreme Court of Oklahoma and Appellees rely as supporting the conclusion that Appellant is estopped to assert unconstitutionality of the instant statutes and order — *Pierce Oil Corp v. Phoenix Refining Co., supra,* 259 U. S. 125 — is itself authority in refutation of their postulate that such an adjudication is non-federal and, therefore, nonreviewable. It will, of course, be noted that this Court *did* review the Oklahoma Supreme Court's judgment in the Pierce case upon writ of error.[29]

Furthermore, numerous decisions of this Court squarely support appealability of the judgment at bar. Thus, in *Grand Rapids & I. R. Co. v. Osborn, supra,* 193 U. S. 17, the state denied an asserted defense to enforcement of a rate order that it unconstitutionally abrogated contractual rights, on the ground of estoppel. Rejecting a

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28. We concede that in many instances predication of a judgment upon the ground that a litigant, by affirmative act, waived or became estopped to assert a particular contention, presents no federal question for review. But such authorities as Appellees rely upon at pages 5-6 of their Motion to Dismiss have no application here—as, for example, *Eustis v. Bolles,* 150 U. S. 361, 37 L. ed. 1111 (1893), where petitioner in error had accepted and retained $8,000 under a composition proceeding he later sought to impeach.

29. See, also, *Frost v. Railroad Comm.,* 271 U. S. 583, 70 L. ed. 1101 (1926); *Hanover Fire Ins. Co. v. Carr,* 272 U. S. 494, 71 L. ed. 372 (1926); *Power Mfg. Co. v. Saunders,* 274 U. S. 490, 71 L. ed. 1165 (1927); and *Wall v. Parrot Silver & Copper Co.,* 244 U. S. 407, 61 L. ed. 1229 (1917), in each of which this Court reviewed a judgment which allegedly enforced an unconstitutional statute, *despite the fact that each judgment was purportedly premised upon estoppel of the petitioner (or appellant) to contest the statute's validity.* Such authorities might be multiplied almost indefinitely.

contention that the petition in error should be dismissed since the state judgment rested upon the non-federal ground of estoppel, this Court said:

> "The determination of the alleged estoppel embodied in the ground of demurrer to the answer of the railroad company and which was sustained by the supreme court of Michigan, necessarily involved a consideration of this claim of a contract right, protected from impairment by the Constitution of the United States. In substance, if not in express terms, such question was passed upon by the court below. A Federal question which gives this court jurisdiction therefore arises on the record." (193 U. S. at 28)

Fully in point, too, is *Abie State Bank v. Bryan, supra,* 282 U. S. 765. There a bank sought to enjoin a special assessment levied pursuant to a Nebraska bank guaranty statute, asserting the levy deprived it of property without due process. The Nebraska Supreme Court held that because the bank had accepted certain benefits flowing from the attacked statute, it "should not be heard . . . to make complaint of a special assessment" (282 U. S. at 771). Upon appeal to this Court, the appellee, citing *inter alia, Pierce Oil Corp. v. Phoenix Refining Co., supra,* 259 U. S. 125, and *Pierce v. Somerset R. Co.,* 171 U. S. 641, 43 L. ed. 316 (1898), demanded dismissal on the ground that:

> " . . . the banks had waived their rights to question the constitutionality of the act by accepting benefits thereunder over a long period of years, and should be estopped from contesting the collection of the special assessment." (75 L. Ed. at 698)

> "... the supreme court [of Nebraska], exercising its proper authority, made an independent finding as to the waiver or estoppel which the appellees had pleaded in defense." (282 U. S. at 773).

In holding the Nebraska judgment reviewable despite its predication upon estoppel, this Court said:

> "But the federal ground being present, it is incumbent upon this court, when it is urged that the decision of the state court rests upon a non-federal ground, to ascertain for itself, in order that constitutional guaranties may appropriately be enforced, whether the asserted non-federal ground independently and adequately supports the judgment. (Citations) As this court said in Enterprise Irrig. Dist. v. Farmers Mut. Canal Co., 243 U. S. 157, 61 L. ed. 644, 37 S. Ct. 318, supra: 'But where the non-federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain.'"

To the same effect is *Union Pacific R. Co. v. Public Service Comm., supra,* 248 U. S. 131, where a state supreme court denied, on the basis of estoppel, an attack by a foreign corporation upon the constitutionality of a state statute, and this court, in an opinion written by Mr. Justice Holmes, nevertheless reviewed and reversed the state court judgment, saying:

> "The supreme court of the state avoided this [federal] question by holding that the application to the Commission was voluntary, and hence that the railroad company was estopped to decline to pay the statutory compensation. It is argued that a decision on this ground excludes the jurisdiction of this court. But the later decisions show that such is not the law, and that, on the contrary, it is the duty of

this court to examine for itself whether there is any basis in the admitted facts, or in the evidence when the facts are in dispute, for a finding that the Federal right has been waived."

Accord is *Citizens' Bank v. Parker, supra,* 192 U. S. 73, where this Court reviewed a judgment of the Louisiana Supreme Court denying a bank's resistance, upon constitutional grounds, to imposition of a license tax, despite the fact that the Louisiana court placed its decision on the bank's estoppel by reason of having accepted statutory benefits. And in *Brinkerhoff-Faris Trust & Savings Co., v. Hill,* 281 U. S. 673, 74 L. ed 1107 (1930), this Court reversed a Missouri Supreme Court judgment which had found the plaintiff "clearly guilty of laches" (281 U. S. at 676) and had, for that reason, rejected plaintiff's contention that a proposed tax levy was unconstitutional. Compare, also, *Ancient Egyptian Arabic Order N. M. S. v. Michaux, supra,* 279 U. S. 737.

Instances are legion where this Court has reviewed judgments denying asserted federal rights, notwithstanding the denials rested upon non-federal grounds alleged by petitioner or appellant to be erroneous.[30] As the foregoing authorities disclose, under such circumstances — which are those here present — the rejection of constitutional rights upon assertedly improper non-federal grounds itself raises a reviewable federal issue.

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30. *State Tax Commission v. Van Cott, supra,* 306 U. S. 511; *Great Northern R. Co. v. Washington, supra,* 300 U. S. 154, 165-168; *Norris v. Alabama, supra,* 294 U. S. 587, 589-590; *Lawrence v. State Tax Commission, supra,* 286 U. S. 276, 282; *Broad R. P. Co. v. So. Carolina ex rel. Daniel, supra,* 281 U. S. 537; *El Paso & N. E. R. Co. v. Gutierrez, supra,* 215 U. S. 87; *Terre Haute & I. R. Co. v. Indiana ex rel. Ketcham, supra,* 194 U. S. 579; *Columbia W. Power Co. v. Columbia Electric Street R. L. & P. Co., supra,* 172 U. S. 487. And see *Pierce Oil Corp. v. Phoenix Refining Co., supra,* 259 U. S. 125, and decisions cited in footnote 29, *supra.*

It is submitted there is no merit to the argument advanced by Appellees in their Motion to Dismiss.

III.

The Federal Question Posed By The Instant Appeal Is Substantial.

In the third and final section of their Motion to Dismiss, Appellees contend the federal issues raised by the instant appeal are unsubstantial, having been foreclosed by prior decisions of this Court. On the contrary, we respectfully submit that the arguments advanced by Appellees are themselves foreclosed by abundant precedent, and that the federal issue presented by this appeal is one which has never been determined adversely to Appellant's position by this Court or by any other court in the land.

(a) *Re waiver, by foreign corporation, of right to attack existing statutes by acceptance of privilege of doing business.*

Despite Appellees' assertion and the Oklahoma Supreme Court's ruling to the contrary, it is well settled that a foreign corporation, by accepting the privilege of transacting business in a state, does *not* thereby waive its right or become estopped to attack existing state statutes as unconstitutional.[31]

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31. *Phillips Petroleum Co. v. Jenkins*, 297 U. S. 629, 80 L. ed. 943 (1936); *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389, 72 L. ed. 927 (1928); *Power Mfg. Co. v. Saunders*, 274 U. S. 490, 71 L. ed. 1165 (1927)—see Case Note, 41 Harv. L. Rev. 95; *Frost v. Railroad Comm.*, 271 U. S. 583, 70 L. ed. 1101 (1926); *Fidelity & D. Co. v. Tafoya*, 270 U. S. 426, 70 L. ed. 664 (1926); *Terral v. Burke Construction Co.*, 257 U. S. 529, 66 L. ed. 352 (1922); *Union Pacific R. Co. v. Public Service Comm., supra*, 248 U. S. 67; *Canadian Pac. Ry. Co. v. Sullivan*, 126 F. (2d) 433 (C. C. A. 1, 1942), *cert. den.* 316 U. S. 696, 86 L. ed. 1766; *Northwestern Nat. Ins. Co. of Milwaukee, Wis. v. Lee*, 49 F. (2d) 274 (D. Oregon, 3 judge court, 1931); *see Hanover Fire Ins. Co. v. Carr*, 272

Thus, it is said in *W. W. Cargill Co. v. Minnesota* ex rel. *Railroad & W. Comm., supra,* 180 U. S. at 468:

> "The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute or with any regulations prescribed by the state railroad and warehouse commission that are repugnant to the Constitution of the United States. A license will give the defendant full authority to carry on its business in accordance with the valid laws of the state and the valid rules and regulations prescribed by the commission."

Mr. Justice Van Devanter wrote for this Court, in *Power Mfg. Co. v. Saunders, supra,* 274 U. S. at 497-498:

> "The contention advanced by counsel for the plaintiff that the defendant impliedly assented to the venue provisions is answered and refuted by repeated decisions holding that a foreign corporation by seeking and obtaining permission to do business in a state does not thereby become obligated to comply with or estopped from objecting to any provision in the state statutes which is in conflict with the Constitution of the United States."

To the same effect is *Quaker City Cab Co. v. Pennsylvania, supra,* 277 U. S. at 400-401:

U. S. 494, 71 L. ed. 372 (1926) and Case Note in 40 Harv. L. Rev. 777; *W. W. Cargill Co. v. Minnesota* ex rel. *Railroad & W. Comm.*, 180 U. S. 452, 45 L. ed. 619 (1900); *Springfield Fire & Marine Ins. Co. v. Holmes*, 32 F. Supp. 964 (D. Mont., 3 judge court, 1940), *rev. on other grounds* 311 U. S. 606, 85 L. ed. 384, *reh. den.* 311 U. S. 726, 85 L. ed. 473; *cf. Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, 80-81, 81 L. ed. 510 (1937); *Kentucky Finance Corp. v. Paramount Auto Exch. Corp.*, 262 U. S. 544, 67 L. ed. 1112 (1923); and *Spaulding v. Douglas Aircraft Co.*, 154 F. (2d) 419 (C. C. A. 9, 1946).

> "It is established that a corporation, by seeking and obtaining permission to do business in a state does not thereby become bound to comply with, or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States."

And see the summation of authorities in *Northwestern Nat. Ins Co. of Milwaukee, Wis. v. Lee, supra,* 49 F. (2d) at 279:

> ". . . the courts with practical unanimity, hold that a foreign corporation, once having been permitted to enter a state and engage in business, has a right to invoke the Fourteenth Amendment against unjust discriminations *whether they arise under legislation passed after its permit or before.* We think this is settled by the decision in *Liggett v. Baldridge,* 278 U. S. 105, 110, 49 S. Ct. 57, 73 L. ed. 204, as to legislation enacted subsequently to the admission of the foreign corporation to do business, and in the case of *Quaker City Cab Co. v. Commonwealth,* 277 U. S. 389, 48 S. Ct. 553, 72 L. ed. 927, as to legislation enacted before the foreign corporation was permitted to do business in the state." (Emphasis added)

The only two decisions to the contrary cited by Appellees are plainly distinguishable.

In *Pierce Oil Corp. v. Phoenix Refining Co., supra,* 259 U. S. 125, decided prior to crystallization of the principle announced in the cases immediately hereinbefore cited, the foreign corporation not only acquired the privilege of doing business in Oklahoma, but also filed with the Oklahoma Corporation Commission an *affirmative acceptance* of the provisions of the statute it later sought to attack (259 U. S. at 127). It applied for and

obtained an order temporarily exempting it from the provisions of the act, thereby acknowledging appreciation of the fact that its operations were within the statute's ambit. It exercised the privilege of eminent domain which the statute accorded (190 Pac. at 859). It was admittedly engaged in transporting oil of other persons for hire, and was a common carrier in fact (190 Pac. at 858; 259 U. S. at 126). The Commission's order, there, was "plainly within the scope of the statute in effect when it entered the state" (259 U. S. at 128). Finally, this Court placed considerable reliance upon:

> ". . . the large discretion which the state had to impose terms upon this foreign corporation as a condition of permitting it to engage in *wholly intrastate business* . . ." (259 U. S. at 128; our italics)

Since the Pierce corporation was transporting for hire oil owned by other persons, and not hauling merely oil from its own wells, its constitutional objections must be viewed in a different light than those of this Appellant.[32] And, in any case, the *affirmative* acceptance of the statute in the Pierce case deprives that decision of current pertinency:

> "Here was no such an *agreement to waive a claim of unconstitutionality* as in *Pierce Oil Co. v. Phoenix Refining Co.*, 259 U. S. 125, 127, 42 S. Ct. 440, 66 L. ed. 855 . . ."
>
> "The situation is entirely different from those in the estoppel cases relied upon by appellees. In each of these the party contending the unconstitutionality

32. *Cf. Valvoline Oil Company v. United States*, 308 U. S. 141, 146, 81 L. ed. 151 (1939).

of the statutes involved had acted *affirmatively* to procure a benefit from such statutes."[33]

As for the famous *Pipe Line Cases,* 234 U. S. 548, 58 L. ed. 1459 (1914), Appellees seemingly rely upon a single sentence in the opinion of Mr. Justice Holmes which was formulated during discussion of the rights of only five of the six appealing pipe line companies, those being the five which were in fact, although not in form, common carriers, and to whom, *without resort to estoppel,* it was held the statute had constitutional application:

> "The control of Congress over commerce among the states . . . may require those who are common carriers in substance to become so in form. *So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.* So the objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we have already intimated, those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipe lines . . . There is no taking and it does not become necessary to consider how far Congress could subject them to pecuniary loss without compensation in order to accomplish the end in view." (234 U. S. at 561; italics ours)

In discussing the rights of the Uncle Sam Oil Company, the only private carrier involved in the appeals, Mr. Justice Holmes does not so much as intimate that future *private* carriers may raise no objection to a sta-

33. *Spaulding v. Douglas Aircraft Co., supra.,* 154 F. (2d) at 422; italics added to the *first* paragraph quoted.

tute which seeks to impose upon them the obligations of a common carrier. The statute there under consideration merely compelled carriers common in substance to become so in form, and it was held constitutionally applicable even to common carriers whose operations antedated Congressional action. Since neither a subsequent pipe line, nor an unconstitutional statute, nor, in any event, a *private* carrier was before the Court for consideration, any language properly considered as expressing an opinion pertaining to the right of a *subsequent, private carrier* to assail an *unconstitutional* statute would be sheer *dictum*. Furthermore Congressional jurisdiction over corporations engaged in interstate commerce may not be likened to state rights touching admission of foreign corporations.

At all events, the authorities hereinbefore cited, decided subsequent to the Pierce and Pipe Line cases, clearly refute the argument of Appellees.

(b) *State may not impose upon foreign corporation, as a condition of admission, waiver of the right to assail unconstitutional statutes.*

Appellees cite one decision, *Washington* ex rel. *Bond & T., Inc. v. Superior Court*, 289 U. S. 361, 77 L. ed. 1256 (1933), for the proposition that a state may constitutionally impose upon a foreign corporation seeking admission thereto a requirement that the corporation accede to the provisions of existent statutes.

Again, however, Appellees fail to appreciate the determinative feature of the case at bar. True, a state may require entering corporations to accept *valid* existing statutes; and acceptance by the corporation of such a condition precludes its right thereafter to contest such enactments. But if the statutes are *unconstitutional*, then

a state may *not* exact from a foreign corporation a surrender of its right to resist them, and acceptance of the privilege of doing business does not estop the corporation from asserting its constitutional rights whether or not it accedes to the state's wrongful demands.

The very authority cited by Appellees itself recognizes this rule:

> "It has repeatedly been said that qualification of a foreign corporation in accordance with the statutes permitting its entry into the State constitutes an assent on its part to all the *reasonable* conditions imposed. (Citations) *It is true that the corporation's entry may not be conditioned upon surrender of constitutional rights,* as was attempted in the cases upon which the appellant relies. (Citations) And for this reason a State may not exact arbitrary and unreasonable terms respecting suits against foreign corporations as the price of admission. (Citation) But the statute here challenged has no such operation."[34]

If, as Appellant contends and this Court is asked to determine, the statutes and the order attacked in the case at bar are unconstitutional as applied to Appellant, then it is undeniable that Oklahoma was without authority to require Appellant to submit thereto, and that, even had Appellant expressly consented to such a condition upon its admission to do business in Oklahoma, nevertheless its right, now, to resist the statutes and order must remain inviolate.[35]

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34. *Washington* ex rel. *Bond & G. & T., Inc. v. Superior Court, supra,* 289 U. S. at 364-365; emphasis supplied.

35. *Phillips Petroleum Co. v. Jenkins, supra,* 297 U. S. 629; *Quaker City Cab Co. v. Pennsylvania, supra,* 277 U. S. 389; *Power Mfg. Co. v. Saunders, supra,* 274 U. S. 490, and Case Note in 41 Harv. L. Rev. 95; *Hanover Fire Ins. Co. v. Carr, supra,* 272 U. S. 494, and Case Note in 40 Harv. L. Rev. 777; *Frost v. Railroad Comm., supra,* 271 U. S. 583;

Mr. Chief Justice Taft stated the applicable principle thus, in *Terral v. Burke Construction Co., supra,* 257 U. S. at 532:

> "The principle established by the more recent decisions of this court is that a state may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the state, exact from it a waiver of the exercise of its constitutional right to resort to the Federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, *whether waived in advance or not.*" (our italics)

He repeated the rule as follows, speaking for this Court in *Hanover Fire Ins. Co. v. Carr, supra,* 272 U. S. at 507:[36]

> "The general principle . . . that foreign corporations cannot do business in a state except by the consent of the state; that the state may exclude them arbitrarily or impose such conditions as it will upon their engaging in business within its jurisdiction. But there is a very important qualification to this power of the state, the recognition and enforcement of which are shown in a number of decisions of recent years. That qualification is that a state may not exact as a condition of the corporation's engaging in business within its limits that its rights secured to it by the Constitution of the United States may be infringed."

Fidelity & D. Co. v. Tafoya, 270 U. S. 426, 70 L. ed. 664 (1926); *Kentucky Finance Corp. v. Paramount Auto Exch. Corp., supra,* 262 U. S. 544; *Terral v. Burke Construction Co., supra,* 257 U. S. 529; *Union Pacific R. Co. v. Public Service Comm., supra,* 248 U. S. 67; *Canadian Pac. Ry. Co. v. Sullivan, supra,* 126 F. (2d) 433; *Northwestern Nat. Ins. Co. of Milwaukee, Wis. v. Lee, supra,* 49 F. (2d) 274; and *Springfield Fire & Marine Ins. Co. v. Holmes,* 32 F. Supp. 964 (3 judge court).

36. The proposition for which Appellees herein cite the Pierce case is expressly repudiated in the Hanover decision, 272 U. S. at page 516.

Accord is *Frost v. Railroad Comm., supra,* 271 U. S. at 596, 598:

> "For, conceding the right of a state to exclude foreign corporations, we must not overlook the limitation upon that right, now equally well settled in the jurisprudence of this court, that the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the Federal Constitution."
>
> "And the principle, that a state is without power to impose an unconstitutional requirement as a condition for granting a privilege, is broader than the applications thus far made of it."

See, too, *Quaker City Cab Co. v. Pennsylvania, supra,* 277 U. S. at 400-401:

> "It is established that a corporation, by seeking and obtaining permission to do business in a state does not thereby become bound to comply with, or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States. The right to withhold from a foreign corporation permission to do local business therein does not enable the state to require such a corporation to surrender the protection of the Federal Constitution."

(c) *The Commission's instant order should be considered as subsequent legislation to which the doctrine of estoppel is inapplicable.*

Appellees apparently concede the rule of estoppel upon which they rely does not, as it assuredly could not, apply with respect to a statute enacted after Appellant had acquired its privilege of doing business in Oklahoma. Plainly a corporation may resist subjection to subsequent unconstitutional enactments, including amendments to

prior legislation.[37] This right extends, also, to subsequent *applications* to a foreign corporation resulting from administrative or judicial interpretation of statutes in existence at the time the corporation acquired its right to enter the state. [38] In this connection, it appears settled law that the mere *application* of a statute to a particular person under a particular state of facts may present a federal constitutional issue, without regard to whether the statute might be upheld as applied to a different set of facts.[39]

Prior to the order now under attack, the subject statutes had never been interpreted or applied to facts remotely analogous to those here present, and undeniably that order inaugurated their attempted application to Appellant:

> "In the previous orders of the Commission . . . neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own."[40]

Hence, the order in question is open to attack by Appellant under the rule of *Connecticut Gen. L. Ins. Co. v. Johnson, supra,* 303 U. S. 77.

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37. *Bacardi Corp. v. Domenech,* 311 U. S. 150, 85 L. ed. 98 (1940); *Connecticut Gen. L. Ins. Co. v. Johnson,* 303 U. S. 77, 82 L. ed. 673 (1938); *Foster-Fountain Packing Co. v. Haydel,* 278 U. S. 1, 73 L. ed. 147 (1928); *Hanover Fire Ins. Co. v. Carr, supra,* 272 U. S. 494; *Springfield Fire & Marine Ins. Co. v. Holmes, supra,* 32 F. Supp. 964 (3 judge court).

38. *Connecticut Gen. L. Ins. Co. v. Johnson, supra,* 303 U. S. 77; *Hanover Fire Ins. Co. v. Carr, supra,* 272 U. S. 494; *cf. Brinkerhoff-Faris Trust & Savings Co. v. Hill, supra,* 281 U. S. 673.

39. *Dahnke-Walker Milling Co. v. Bondurant,* 257 U. S. 282, 66 L. ed. 239 (1921); *Fidelity & D. Co. v. Tafoya, supra,* 270 U. S. 426; *Fiske v. Kansas,* 274 U. S. 380, 71 L. ed. 1108 (1927).

40. Paragraph 1, p. 3, typewritten opinion of Oklahoma Supreme Court in the case at bar.

In addition, the Commission's order herein is itself legislative in character, and a "statute" within the meaning of the Fourteenth Amendment to the Federal Constitution.[41] By the same token, that order constitutes a "subsequent statute" which Appellant is free to assail without regard to the estoppel doctrine.

In this connection, it should perhaps be pointed out that although the Commission's order was legislative in its inception, having been subjected to *judicial* review by the Oklahoma Supreme Court it became, thereby, transformed into a "suit" within the requirement of Sec. 237 (a) of the Judicial Code.[42]

Nor, we hasten to forfend, is there any question but that the Oklahoma Supreme Court's review herein was judicial. This Court's decision in *Southwestern Bell Teleph. Co. v. Oklahoma,* 303 U. S. 206, 82 L. ed. 751 (1938), stemmed from sections 20 through 23, and especially section 23, of Article IX of the Oklahoma Constitution.[43] The principle there applied has since been strictly confined to rate or traffic transportation orders governing

41. *Sultan Ry. & T. Co. v. Department of Labor and Ind.*, 277 U. S. 135, 72 L. ed. 820 (1928); *King Mfg. Co. v. Augusta*, 277 U. S. 100, 72 L. ed. 801 (1928); *Hamilton v. U. of California*, 293 U. S. 245, 79 L. ed. 343 (1934), *reh. den.* 293 U. S. 633, 79 L. ed. 717; *Live Oak Water Users' Assn. v. Railroad Comm.*, 269 U. S. 254, 70 L. ed. 305 (1926); *Northern Pac. R. Co. v. Department of Public Works*, 268 U. S. 39, 69 L. ed. 836 (1925); *Bluefield Water Works & Improv. Co. v. Public Service Comm.*, 262 U. S. 679, 67 L. ed. 1176 (1923); *Lake Erie & W. R. Co. v. State P. U. Comm.* ex rel. *Cameron*, 249 U. S. 422, 63 L. ed. 484 (1919).

42. *Old Colony Trust Co. v. Comm'r., supra*, 279 U. S. 716.

43. These constitutional provisions governed only appeals from orders concerning "rates, charges, or the classification of traffic of any transportation or transmission company" (Okla. Const. Ann., Art. IX, §23).

transportation companies.[44] Furthermore, following this Court's decision in the Bell Telephone Company case, the Oklahoma Legislature, pursuant to unique authority conferred upon it by the Oklahoma Constitution,[45] amended the aforesaid provisions of the state constitution in 1941 so that today, in all instances, the Oklahoma Supreme Court's review of any order of the Corporation Commission is *judicial*.[46]

We note Appellees' assertion (Motion to Dismiss, p. 7) that "on numerous occasions" both the Corporation Commission and the Oklahoma Supreme Court had made:

> ". . . identical applications of the statutes involved prior to the time that appellant qualified to do business in the State of Oklahoma."

But the record herein flatly contradicts that statement. At page 4 of its original order, the Commission itself confesses:

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44. See *Oklahoma Packing Co. v. Oklahoma G. & E. Co.*, 309 U. S. 2, 84 L. ed. 536 (1940); *Oklahoma Cotton Ginners' Ass'n. v. State*, 174 Okla. 243, 51 P. (2d) 327 (1935); *Cary v. Corporation Comm. of Okla.*, 17 F. Supp. 772 (W. D. Okla., 1936).

45. ". . . the Legislature may, by law, from time to time, alter, amend, revise, or repeal sections from eighteen to thirty-four, inclusive, of this article, or any of them, or any amendments thereof." (Okla. Const Ann. Art. IX, §35.)

46. L. 1941, §6, p. 547, 28 April 1941 (Okla. Const. Ann., Pocket Supp., Art. IX, §23) repealed former §23; and former §§20, 21, and 22 were amended, respectively, by L. 1941, §1, p. 544, §2, p. 545, and §3, p. 545 (Okla. Const. Ann., Pocket Supp., Art. IX, §§20, 21, and 22). The presently controlling statute (L. 1941, §1, p. 544, Okla. Const. Ann., Pocket Supp., Art. IX, §20) now provides:

"The Supreme Court's review of appealable orders of the Corporation Commission *shall be judicial only*, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts."

"This statute has never been directly interpreted by any court . . . "

And the Oklahoma Supreme Court makes an identical concession at page 8 of its typewritten opinion:

"So far as we have been able to find this court has never been called upon to construe and apply the provisions of these sections."

Nor are the "other decisions" construing "other statutes", to which the Commission, the Oklahoma Supreme Court, and Appellees refer, even distantly relevant.

Thus, *Oklahoma Natural Gas Co. v. Corporation Commission*, 90 Okla. 84, 216 Pac. 917 (1923), their chief reliance,[47] involved a *domestic* corporation which was a *public utility*, operating its own distribution system and also making city-gate sales of gas to other distribution companies for re-sale to ultimate consumers.[48] The case was:

". . . an appeal from an order of the Corporation Commission prescribing rates to be charged by the Oklahoma Natural Gas Company for gas furnished by it to various distributing companies and municipalities in the state." (216 Pac. at 917)

The sole issue determined is thus accurately condensed by the court's own opinion:

"The question presented by this appeal is whether the rates prescribed by the Corporation Commission are reasonable and just. The company contends that such rates, both city gate and distribution, are un-

47. Appellees' Motion to Dismiss, page 7, describes this case as involving "an order identical in principle" to the instant one.

48. "The Oklahoma Natural Gas Company is a public utility . . . " (216 Pac. at 918).

reasonable and unjust, and do not and will not render it a reasonable return upon the value of its property used and useful in rendering the service required of it." (216 Pac. at 919)

H. F. Wilcox Oil and Gas Company v. State,[49] *Oklahoma Natural Gas Corporation v. State,*[50] *C. J. Julian Oil & Royalties Co. v. Capshaw,*[51] and *Quinton Relief Oil & Gas Co., v. Corporation Commission,*[52] the other Oklahoma decisions declared to have invested Appellant with inceptive comprehension of the applicability to private gathering lines of the 1913 and 1915 statutes, albeit none involved or discussed either of such

49. 162 Okla. 89, 19 P. (2d) 347 (1933). Upon appeal from an order shutting in a well, counsel for the appellee-Commission confessed there was "no evidence in this record supporting the order appealed from" (19 P. (2d) at 349). Reversal therefore being inevitable, the Oklahoma Supreme Court severely criticized the Commission for having deprived the appellant "of its legal rights . . . not only in this instance, but in a prior instance wherein the attorneys for the appellees admitted in this court that the orders requiring the shutting in of the wells of this appellant were ineffective and void" (19 P. (2d) at 350). It then delivered a gratuitous lecture "for the guidance of the corporation commission in future hearings" (19 P. (2d) at 349), containing narry one word touching upon any issue entailed by the case at bar. It is this anomalous decision which is incorrectly cited atop page 3 of the instant, mimeographed Commission order as 119 P. (2d) 347.

50. 161 Okla. 104, 17 P. (2d) 488 (1932), upholding an order, issued pursuant to a 1921 statute, directing two *common purchasers* in fact and in law to take gas ratably. No objection was voiced that the order compelled a private gatherer of his own gas to purchase from others gas it did not want, and the opinion gives no intimation that the 1921 act, or any other enactment then extant, could apply to *private* gathering lines.

51. 145 Okla. 237, 292 Pac. 841 (1930), twenty-five pages of amorphous generalizations, which simply upheld a basic proration order, of the type prevailing in petroleum states, restricting each well to a production in the proportion that its potential bore to the total pool potential. No other problem was even considered.

52. 101 Okla. 164, 224 Pac. 156 (1924). This case merely upheld the state's authority to prohibit wasteful utilization of gas for carbon black manufacture, citing *Walls v. Midland Carbon Co.*, 245 U. S. 300, 65 L. ed. 276 (1920) as determinative of the entire appeal.

enactments, are no less disrelated than *Oklahoma Natural Gas Co. v. Corporation Commission, supra,* (216 Pac. 917), to any issue here pertinent.

On page 7 of their Motion to Dismiss, Appellees state:

> "The order of the Corporation Commission of the State of Oklahoma involved herein reflects that it had on numerous occasions made identical applications of the statutes involved prior to the time that appellant qualified to do business in the State of Oklahoma."

Per contra, it is patent from even a cursory reading of the instant Commission order that the case at bar was for it one of troublesome first impression. Nor have we been favored by either Commission or Appellees with the citation of so many as a single order of the Commission applying the 1913 or 1915 statutes to a private gatherer of its own gas from its own wells. Had any such order ever been promulgated, it is unthinkable that, as both the Commission and the Oklahoma Supreme Court concede, these statutes would never have become subject to judicial consideration.

Finally, we take notice of Appellees' declaration that:

> ". . . appellant knew of the interpretation placed upon the statutes involved by the Corporation Commission of the State of Oklahoma when it qualified to do business in the State of Oklahoma (R. 270)." (Motion to Dismiss, p. 7)

The same affirmation appears on page 10 of the mimeographed Commission order herein where the supporting evidence is directly referred to:

"Q. I will ask you if Commissioner Armstrong didn't ask you [Appellant] this further question [at a prior Commission hearing], and if you didn't make this further answer:

"'Q. It has always been the understanding between your company and the representatives of the Corporation Commission as you moved into Oklahoma, *that there was a ratable taking law* in this State?

"'A. Yes.'

"A. Yes, sir." (R. 340; Okla. Sup. Ct. Tr., 270)

It requires no argument to demonstrate that knowledge of the existence of the 1913-1915 "ratable taking laws" is nowise tantamount to realization that those statutes would one day be construed as applicable to private gatherers of their own gas from their own wells.

We submit the Commission's order herein should be treated as the legislative enactment of a "statute" long subsequent to Appellant's admission to Oklahoma, and that, therefore, Appellant may not be held to have "waived" its right to assert the unconstitutionality thereof.

We further submit that, under the authorities hereinbefore cited, even had Appellant knowingly and affirmatively agreed to abide enforcement against it of the 1913-1915 statutes in consideration of the privilege of doing Oklahoma business, those statutes, as applied to Appellant, being repugnant to the Constitution of the United States, such waiver would, by the same token, itself be void and unenforceable against Appellant.

(4) *The statutes and the Commission order are, as applied to Appellant, unconstitutional.*

We do not propose to argue, here, the merits of our appeal, save to the brief extent necessary to demonstrate substantiality of the federal issue it raises.

In the last paragraph of their Motion to Dismiss, Appellees cite *Ohio Oil Company v. Indiana,*[53] for the statement that a state Commission may shut in a gas well in order to prevent waste or protect correlative rights. This power, where waste exists, we concede. Even a natural person may be "shut in" by the state for violation of its lawful criminal codes.

But in the case at bar there was no "waste", the Commission's order being issued exclusively in behalf of the private "correlative rights of Peerless".[54] The cited decision constitutes no precedent whatever for the instant judgment.

Nor, for that matter, has any decision by any court in the land ever upheld the right of a state to compel a private gatherer of his own gas from his own wells in his own gathering lines, who neither purchases gas from nor transports gas for any other person, to purchase and carry gas from the well of another.

Champlin Refining Company, v. United States, 328 U. S. ..., 91 L. ed. (Adv. Sheet) 9 (18 Nov., 1946) not only did *not* so hold, but expressly left open the issue raised by the judgment at bar. That opinion, interpreting

53. 177 U. S. 190, 44 L. ed. 729 (1900). This case upheld a Commission order, pursuant to Indiana statutes, prohibiting the unrestrained flow of gas from a well into the open air, and commanding the well owner to confine its gas "in tanks, pipes, or other proper receptacles" (177 U. S. at 197)—an unarguably proper recognition of the state's power to prevent sheer waste of its valuable natural resources.

54. First paragraph, last page of the typewritten opinion of the Oklahoma Supreme Court in the case at bar.

Section 19(a) of the Interstate Commerce Act and involving the interstate commerce powers of Congress, merely held that a private pipe line company might be compelled by the Interstate Commerce Commission to furnish *information;* in it, this Court was careful to point out that it did not intend thereby to uphold the Commission's power to impose common carrier-like obligations upon the appellant:

> "Appellant further contends that, as so construed, the Act exceeds the commerce power of Congress and violates the Fifth Amendment because it is argued that this interpretation converts a private pipe line into a public utility and requires a private carrier to become a common carrier. *But our conclusion rests on no such basis and affords no such implication.* The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. [It does not follow that a state is imbued with comparable power over foreign corporations desiring to transact business within its borders.] This power has yet been invoked *only to the extent of requiring Champlin to furnish certain information* as to facilities being used in interstate marketing of its product. The commerce power is adequate to support *this requirement* whether appellant be considered a private carrier or a common carrier.
>
> "The contention that the statute as so construed violates the due process clause by imposing upon a private carrier the obligations of a conventional common carrier for hire *is too premature and hypothetical to warrant consideration on this record. The appellant in its entire period of operation has never been asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any*

other company or person: If it does, it will be timely to consider the concrete requirements and their specific effects on appellant. At present, appellant is asked only to provide information about a subject within the power possessed by Congress and delegated to the Commission, and that cannot be considered a taking of property even if it arouses appellant's premonitions.]' (91 L. ed., Adv. Sheet, p. 12; our emphasis)

Undeniably, therefore, the Champlin decision lends no support to the instant judgment.

Subject to precisely this same distinction is *Valvoline Oil Company v. United States, supra,* 308 U. S. 141, where the same type of "informational" order was reviewed. In addition, the appellant there was not solely a transporter of its own oil, its factual situation being similar to that of the 5 unsuccessful appellants in *The Pipe Line Cases, supra,* 234 U. S. 548, rather than to that of the *Uncle Sam Oil Company:*

"... that company's [Uncle Sam Oil Company's] pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportion under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determines the applicability of the statute to Valvoline." (308 U. S. at 146)

And as heretofore pointed out, *The Pipe Line Cases* themselves did not sustain the statute as to private carriers. They merely held Congress, in the exercise of its interstate commerce powers, could "require those who are common carriers in substance to become so in form" (234 U. S. at 561); the only *private* carrier there involved, The Uncle Sam Oil Company, was exempted by this Court from the statute's application.

The immediately foregoing constitute all of the decisions cited and relied upon by the instant Appellees, the Oklahoma Corporation Commission, and the Supreme Court of Oklahoma as justifying the present judgment. Yet not one is a relevant precedent here.

Neither has our research disclosed any decision by any court which even tends to support the instant judgment. On the other hand, *The Uncle Sam Oil Company* decision, *Texoma Natural Gas Co., v. Railroad Commission*, 59 F. (2d) 750 (W. D. Texas, 3 judge court, 1932), and *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, 81 L. ed. 510 (1937), sustain our contention that the Oklahoma statutes and Commission order may not constitutionally be applied to Appellant.

The facts of the Texoma case are indistinguishably parallel to those here present, and the court there held an order like the one here under attack, premised, like the instant order, upon a theory of protecting private "correlative rights", was invalid:

> "The carrier's private status is changed to that of public by the declaration of the act alone. The Legislature is without power to do this. It is taking private property for public use without just compensation, inconsistent with the due process of law clauses of the Fourteenth Amendment to the Constitution." (59 F. (2d) at 753)

The Texoma decision merited this Court's approval in the Thompson case, the following excerpts from the latter opinion being illustrative of its pertinency here:

> ". . . the plaintiffs assert that . . . [the order's effect] . . . is not to prevent waste of gas in the common reservoir nor to prorate the opportunities for *production as distinguished from marketing;* that

the limitation of the production of wells is merely a device to compel the individual plaintiffs, and other pipe line owners, to purchase gas for which they have no need; that the real purpose and effect of the order are to prorate *not production, but distant markets and the facilities* for servicing them; and that, thus, the order takes their property without warrant in law." (300 U. S. at 67-68; our italics)

"The defendants contend, apparently, that House Bill 266 should be construed as authorizing the Commission to reduce the production of the plaintiffs and of other pipe line owners, even if the sole purpose for doing so is to furnish a market for the sweet gas of those wells now without pipe line connections [300 U. S. at 73] . . . . we are clearly of opinion that if the Act were construed as the defendants contend it should be, and as the Commission has applied it, it would violate the Federal Constitution . . . ." (300 U. S. at 75)

"Every well owner in the field is free to produce the gas, provided he does not do so wastefully. He is legally and, so far as appears, physically free to provide himself with a market and with transportation and marketing facilities. There is no basis for a claim that his right, or opportunity, will be interfered with by a disproportionate taking by any one of those who may legally produce." (300 U. S. at 77)

"The use of the pipe line owner's wells and reserves is curtailed solely for the benefit of other private well owners. The pipe line owner, a private person, is, in effect, ordered to pay money to another private well owner for the purchase of oil which there is no wish to buy . . . Plaintiff's pipe lines are private property. So far as appears, they are constructed on private lands. There is no suggestion that any of them is a common carrier of gas. The purpose of the owners in constructing the pipe lines was for the transport of gas only from their own

leases, and such has been their consistent policy . . . the pipe lines are not used in connection with the operation of any public utility in Texas.

"The purpose of this order is the same as that which the Legislature sought to achieve by the 'Common Purchaser Act', of August 12, 1931, held unconstitutional in *Texoma Natural Gas Co. v. Railroad Commission* (D. C.) 59 F. (2d) 750.

"Our law reports present no more glaring instance of the taking of one man's property and giving it to another." (300 U. S. at 77-80)

Manifestly the instant appeal raises a substantial federal question in the sense that the Oklahoma Supreme Court's judgment is *at least* arguably incorrect. In fact, not only is that judgment unsupported by judicial precedent, but it is directly impeached by the adjudications immediately hereinbefore discussed.

Furthermore, if permitted to stand its effects will be so obviously innovatory and portentously far reaching that review by this Court is imperative. It would appear to necessitate no discussion by us to establish the nationwide importance of a judgment decreeing that a private person must devote his private property to the services of his neighbor merely because that neighbor does not deem it economically feasable to make the requisite capital expenditure to acquire similar facilities for himself.

We respectfully submit both that the instant judgment is reviewable by this Court, and also that the federal question involved is of such incalcuably widespread and momentous significance that to denominate it "substantial" is consummate understatement.

The motion to dismiss should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 134

REPUBLIC NATURAL GAS COMPANY, a corporation,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL & GAS COMPANY, a corporation, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF OF APPELLANT

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1 Bouvier's Law Dictionary (1941), p. 553 13

1 Hutchinson, Carriers (3rd ed.) par. 47 13

3 Honnold, Supreme Court Law (1933), p. 1974 23

40 Harv. L. Rev. 777 (Case Note on Hanover Fire Ins. Co. v. Carr, *supra*, 272 U. S. 494) 32, 39

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41 Harv. L. Rev. 95 (Case Note on Power Mfg. Co. v. Saunders, *supra*, 274 U. S. 244) 32, 39

9 Am. Jur., "Carriers", §4, p. 430 13

9 Am. Jur., "Carriers", §5, p. 432 ..... 13, 14

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43 Am. Jur., "Public Utilities and Services", §5, p. 574 10

13 C. J. S., "Carriers", §3, p. 26 10

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IN THE

Supreme Court of the United States

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No. 134

REPUBLIC NATURAL GAS COMPANY, a corporation,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL & GAS COMPANY, a corporation, *Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF OF APPELLANT

A.

OPINIONS BELOW

(a) The opinion of the Oklahoma Supreme Court has not been officially reported. It is reported unofficially in 180 P. (2d) 1009, and appears at page 453 of the record.

(b) The Oklahoma Corporation Commission's opinion is unreported, but appears at page 409 of the record.

B.

JURISDICTION

This appeal is from a final judgment of the highest court of the State of Oklahoma upholding as valid an Oklahoma statute, and an order of the Oklahoma Corporation Commission purportedly issued pursuant thereto, which statute and order were assertedly repugnant to the Constitution of the United States. Jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. A. §344a).

For a complete demonstration of this Court's appellate jurisdiction of the case at bar, see printed *Statement as to Jurisdiction,* and printed *Brief of Appellant in Opposition to Motion to Dismiss Appeal.*

C.

STATEMENT OF THE CASE

The Oklahoma Supreme Court's judgment is predicated entirely upon "undisputed evidence" (R. 458, line 30), the enormity of the instant record being necessitated simply to demonstrate the absence of any pertinent evidence except that summarized in the court's opinion. Throughout we shall refer to appellant Republic Natural Gas Company as "Republic", and to Peerless Oil and Gas Company, appellee, as "Peerless".

Republic is a Delaware corporation (R. 6, 17-18, 373), authorized, since 1937 (R. 456, line 17) or 1938 (R. 424), to transact business in Oklahoma (R. 6, 18). Despite the broad provisions of its charter (R. 373, 408a), Republic's actual business has been confined to

drilling and producing its own gas wells, and constructing, owning, and operating a pipe line gathering system by means of which it delivers and sells its own gas production; Republic has drilled a number of producing gas wells in the Oklahoma portion of the Hugoton Gas Field (R. 455-456, 457), and has constructed and operated "a pipe line gathering system of large size" (R. 456, lines 5-6), the main line of which extends some 25 or 30 miles (R. 457) from Oklahoma to Kansas (R. 456, 457).

Most of the production from Republic's Oklahoma wells is transported through Republic's pipe line gathering system to Kansas where it is sold, under contract (Ex. 15, R. 305-373, introduced at R. 167), to Northern Natural Gas Company (R. 423, 425), a common purchaser and common carrier of natural gas (R. 456, 457). The balance of Republic's Oklahoma production is gathered and sold in Oklahoma to Cities Service Gas Company (Ex. 50, R. 297-302, introduced at R. 175), another common purchaser and carrier of natural gas (R. 456, 457). There is no connection or affiliation, through stock ownership or otherwise, between Republic and the two pipe line outlets purchasing its gas (R. 456).

A complete, accurate description of Republic's operations is contained in the opinion of the Oklahoma Supreme Court:

> "Republic drilled its first wells in Texas County, Oklahoma, in 1937, and has since that time been continuously engaged in the drilling of additional wells and in extending and enlarging its pipe line system to take care of the production from such wells. *It has at no time held itself out as, or purported to be, a common purchaser or common car-*

rier of gas, nor has it transported gas from any wells other than its own[1] . . ." (R. 456; emphasis ours)

In this connection, although on one occasion Republic applied for and was granted permission by the Board of County Commissioners of Texas County, Oklahoma, to lay part of its pipe line gathering system in a county highway (R. 200-203), there is no evidence Republic possesses or has ever exercised or attempted to exercise powers of eminent domain (see R. 183).

On 28 April 1944, Peerless completed a commercial gas well in Section 14, Texas County, Oklahoma (R. 456). Under Corporation Commission regulations, only one well may be drilled upon each section of Oklahoma land (R. 456). The Peerless well is nearly surrounded by other wells owned and produced by Republic (R. 456). Since the Peerless and Republic wells are drilled into the same common source of supply (R. 457), operation of the Republic wells is draining gas from under the dormant Peerless well (R. 456). However, the Commission has fixed and allocated the amount of gas which may be produced from the Hugoton Gas Field to supply the market demand therefor (R. 455), and Republic has not taken "from its producing gas wells any gas in excess of its determined allowable, as fixed by the Corporation Commission" (R. 457).

---

1. ". . . except that under request of the Petroleum Administrator for War, it carried in its pipe lines, free of charge, gas from certain producing wells which the Petroleum Administrator required it to transport as a prerequisite to permitting it to drill additional wells of its own. It also transports gas *of its royalty owners* under its leases, which require it to pay as royalty 1/8 of the proceeds of the sale of gas" (R. 456; the statement "of its royalty owners", italicized by us, is a fallacious *legal* conclusion, as will hereinafter be demonstrated).

Peerless has no market for the gas from its well (R. 8, par. 11), nor any pipe line by which it could transport and deliver such gas to any market it might secure. However, one line of Republic's private gathering system crosses Section 14 a short distance from the Peerless well (R. 457). Upon the assumption that Laws 1913, Chapter 198 (52 Okla. Stats. Ann. §§231-235) and Laws 1915, Chapter 197 (52 Okla. Stats. Ann. §§236-247) — particularly Laws 1913, Chapter 198, §3 (52 Okla. Stats. Ann. §233) — compelled Republic to purchase and "take" Peerless' gas at its request, Peerless served written demand upon Republic to accept into its pipe line gathering system and pay for gas to be produced from the Peerless well (R. 10, 11). When Republic refused to accede to such demand, Peerless, on 1 August 1944, filed a formal application with the Oklahoma Corporation Commission praying that an order be entered (R. 9):

> " . . . requiring Republic Natural Gas Company . . . to connect its pipe line to the well drilled and owned by Peerless Oil and Gas Company aforesaid, at some point designated by this Commission, and to produce natural gas from its said wells ratably with said well of Peerless Oil and Gas Company, and to take and purchase natural gas from said Peerless Oil and Gas Company's well at a price to be fixed by this Commission."

While the aforesaid statutes had been enacted prior to Republic's authorization to do business in Oklahoma, they had never, previous to the case at bar, been construed by the Oklahoma Supreme Court or applied by the Oklahoma Corporation Commission (see R. 414, lines 17-18; R. 459, lines 28-30). Nor, in this connection, is there any evidence that Republic "accepted

and agreed to comply with the laws of the State of Oklahoma" (R. 424, lines 22-24), save as acceptance of the privilege of operating in Oklahoma may imply submission to valid Oklahoma law (see R. 462, lines 32-35; R. 219-220).

Denying Republic's assertion that the noted statutes, if construed as justifying such an order as Peerless requested, were repugnant to the Fourteenth Amendment to the United States Constitution (R. 34-35), the Commission held the statutes authorized it to require Republic to purchase and transport gas from the Peerless well, in order to assure "ratable taking" and protect the private "correlative rights" of Peerless, even if Republic were not a common purchaser or common carrier (R. 425, Finding 22; also, R. 412, lines 34-36; R. 414, lines 21-26; R. 416, lines 31-33). Accordingly, it issued the order prayed for (R. 427-428).

Upon appeal, the Oklahoma Supreme Court affirmed the Commission order, holding that although Republic was neither a common purchaser nor a common carrier of gas (R. 456, lines 20-23) nevertheless the order was authorized by Laws 1913, Chapter 198 (R. 458, lines 18-32).

Whereupon, deeming its federal constitutional rights impaired, Republic perfected the instant appeal to this Court (R. 473).

In an appendix to this brief we have quoted and summarized the applicable Oklahoma statutes.

D.

SPECIFICATION OF ASSIGNED ERRORS HEREIN URGED

Appellant intends to and does rely upon each of the eleven errors assigned by it (R. 474-477), and hereby incorporates by reference its statement of points to be relied upon (R. 479-483). Those errors pose the following two legal issues, the statement of which will serve as a summary of appellant's argument herein:

1. Republic owns and produces gas wells in Oklahoma. It owns and operates a pipe line gathering system whereby it collects gas from its wells and delivers and sells it under contract to two unaffiliated gas purchasers. Republic is neither a common purchaser nor a common carrier, and transports no gas in its pipe line gathering system except its own gas from its own wells. The *amount* of gas Republic produces from its wells is not excessive, wasteful, or violative of any statute or commission order. But because Republic's wells produce from the same gas reservoir into which the Peerless well is drilled, the *source* of part of Republic's production is gas migrating from beneath the Peerless well. Peerless has no market for its gas nor any pipe line facilities for carrying its gas to any market.

Under such circumstances, are a state statute, and a commission order purportedly issued pursuant thereto, which require Republic to purchase gas from the Peerless well and transport such gas in Republic's private gathering system to Republic's private market, repugnant to the due process and equal protection of laws clauses of the United States Constitution's Fourteenth Amendment?

It is Republic's contention that a private corporation which purchases no gas from anyone may not be compelled to purchase gas from another private corporation; that the owner of a private gathering system may not by legislative fiat be converted into a common carrier; and that merely because Republic, in *producing* its wells, drains gas from under the well of Peerless, Republic may not constitutionally be compelled to buy gas from Peerless, carry that gas in Republic's private gathering system, and deliver such gas to Republic's private market, thereby sharing with Peerless its private market and its private facilities for reaching that market. (*Assignments of error,* I, II, III, IV, XI, R. 474-477; *statement of points to be relied upon,* I, II, III, IV, VIII(a), R. 479-482.)

2. Republic is a Delaware corporation. The aforementioned Oklahoma statute, upon which the Commission order is predicated, was enacted prior to Republic's authorization to do business in Oklahoma. But, previous to the case at bar, such statute had never been construed or applied; and Republic has never consented to be bound thereby.

Under such circumstances, may Republic be compelled, under the doctrines of waiver and estoppel, to submit to enforcement by the Commission order of the unconstitutional statute? (*Statement of points to be relied upon,* VIII(b), R. 483.)

It is Republic's contention:

(a) That mere acceptance by a foreign corporation of the privilege of transacting business in a state does not constitute a waiver of its right to object, or estop it from objecting, to enforcement of unconstitutional statutes antedating its entry into the state. (*Assignments*

of error, V, VI, IX, R. 475-476; *statement of points to be relied upon,* V, VIII(b), R. 480, 483).

(b) That a state may not lawfully impose upon a foreign corporation, as a condition of granting it the privilege of doing business, a requirement that the corporation surrender the protection of the Federal Constitution and waive the right to resist enforcement of unconstitutional state statutes; and that such a waiver, even if exacted, would itself be unconstitutional, void, and unenforceable. (*Assignments of error,* VII, VIII, R. 476; *statement of points to be relied upon,* VI, VIII(b), R. 481, 483.)

(c) That no such waiver could, in any event, estop the foreign corporation from resisting a subsequent unconstitutional interpretation and application of a statute which had not been construed or applied in such unconstitutional manner prior to the corporation's entry into the state. (*Assignment of errors,* X, R. 477; *statement of points to be relied upon,* VII, VIII(b), R. 482-483.)

E.

ARGUMENT AND AUTHORITIES

I.

The Statutes and the Commission Order Are, as Applied to Republic, Unconstitutional.

We have, here, no question of statutory construction. The Oklahoma Supreme Court has interpreted the state statutes as justifying the Commission order now under attack, and the sole issue here is whether those statutes

and the Commission order, upon whatever statutory phraseology it purports to rest, are constitutional as applied to Republic. In short, our problem is not whether the order is authorized by Oklahoma statute, but, instead, is whether the order and statutes are authorized by the United States Constitution. By the same token, no studied attention to the particular statutory provisions is necessary.

Preliminarily, also, it should be noted ours is a pure question of law unfettered by controverted factual considerations. The Oklahoma Supreme Court sustained the Commission entirely upon the basis of "undisputed evidence" (R. 458, line 30) which established that Republic:

> ". . . has at no time held itself out as, or purported to be, a common purchaser or common carrier of gas, nor has it transported gas from any wells other than its own . . ." (R. 456)

The Commission's arbitrary findings to the contrary (R. 425, findings 20, 21) are wholly without evidentiary support.

Republic's charter provisions, although stressed by the Commission (R. 423, finding 18), are immaterial.[1] As Mr. Justice Stone wrote for this Court in *United States v. California*, 297 U. S. 175, 181, 80 L. ed. 567, 571 (1936):

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1. *Terminal Taxicab Co. v. Kutz*, 241 U. S. 252, 253-254, 60 L. ed. 984, 986 (1916); *United States v. Brooklyn Eastern District Terminal*, 249 U. S. 296, 304, 63 L. ed. 613, 616 (1919); 43 Am. Jur., "Public Utilities and Services", §5, p. 574, and annotations therein cited.

"Whether a transportation agency is a common carrier depends not upon its corporate charter or declared purposes, but upon what it does."

Neither is it correct to state that Republic:

> " . . . transports gas *of its royalty owners* under its leases, which require it to pay as royalty 1/8 of the proceeds of the sale of gas" (R. 456; italics ours).

As the above-quoted statement acknowledges, Republic's leases require it to pay to its lessors, as royalty, "one-eighth of the proceeds from the sale of the gas" (R. 178-179; for exact wording, see R. 28, par. i). Title to gas produced from leased premises depends upon the specific wording of the particular lease;[2] but when the lease provides for royalty payment not in kind,[3] but in money at a stated percentage of sales proceeds, title to all gas produced vests *instanter* in the lessee.[4] By the same token, Republic neither purchased gas from nor transported gas for its royalty owners.

For the latter proposition, see *United States v. Stanolind Crude Oil Purchasing Co.*, 113 F. (2d) 194, 198-199 (C. C. A. 10, 1940):

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2. *American Oil & Refining Co. v. Cornish*, 173 Okla. 470, 49 P. (2d) 81, 82 (1935); *Replogle v. Indian Territory Illuminating Oil Co.*, 193 Okla. 361, 143 P. (2d) 1002, 1007 (1943).

3. As, for example, the standard oil royalty clause in Form 88B producers oil and gas leases: " . . . the said lessee covenants and agrees: 1st. To deliver to the credit of the lessor, free of cost, in the pipe line to which lessee may connect his wells, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises".

4. *Replogle v. Indian Territory Illuminating Oil Co., supra*, ft'n. 2, 143 P. (2d) at 1007-1008; *United States v. Stanolind Crude Oil Purchasing Co.*, 113 F. (2d) 194, 198 (C. C. A. 10, 1940).

"Because of the vagrant and fugitive nature of oil and gas, the owner of the land has no absolute right or title to the oil or gas which may permeate the strata underlying the surface of his land. He only has a qualified interest therein, namely, the exclusive right to erect structures on the surface of his land, to explore for oil and gas by drilling wells through the underlying strata, and to take therefrom and reduce to possession oil or gas found therein, and thus acquire absolute title thereto as personal property. But neither the landowner nor his lessee obtains title to the oil and gas until he reduces it to possession.

" . . . We are concerned here only with leases which provide for the payment, as royalty, of a stipulated percentage of the gross proceeds derived from the sale of oil. *It is well settled that in the latter type of lease, the lessor does not acquire title to any part of the oil which the lessee produces and reduces to his possession.*

"It follows that the oil sold under the leases here involved was the oil of the lessees . . ." (Italics ours)

And, as is held in *Replogle v. Indian Territory Illuminating Oil Co., supra,* 193 Okla. 361, 143 P. (2d) at 1007-1008, there is not even a "purchase" of gas from, much less a "transportation" of gas for, the lessor under leases such as the instant ones:

" . . . the transaction whereby the lessees paid for the gas could not properly be called a purchase for the use of the word 'purchase' connotes the transfer of ownership from a seller to a buyer."

Again, it is of no moment that:

" . . . under request of the Petroleum Administrator for War, it [Republic] carried in its pipe lines, free of charge, gas from certain producing

wells which the Petroleum Administrator required it to transport as a prerequisite to permitting it to drill additional wells of its own" (R. 456).[5]

To constitute one a common carrier there must be a holding out to the public generally.[6] This fundamental principle is asserted, and footnoted by a plethora of supporting authority, in 9 Am. Jur., "Carriers", §4, p. 430:

> " . . . a common carrier may be defined, very generally, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally . . . The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by course of conduct, as to the service offered or performed."

In the case at bar, the three temporary and special contracts entered into by Republic with Pioneer Petroleum Company, Benedum-Trees Oil Company, and Cities Service Gas Company, were not ones of carriage "for compensation". Instead, transportation was performed "free of charge" (R. 456, line 25), with Re-

5. See R. 173-4, 184-193, 203-204; exhibit 50 (R. 297, introduced at R. 175), and exhibits at R. 224-296a (introduced generally at R. 221) for detailed evidence pertaining to these special transactions with three producers.

6. 1 Bouvier's *Law Dictionary* (1914), p. 553; 1 Hutchinson, *Carriers* (3rd ed.), par. 47; 9 Am. Jur., "Carriers", §5, p. 432; 13 C. J. S., "Carriers", §3, p. 26; see *Michigan Public Utilities Comm. v. Duke*, 266 U. S. 570, 576, 69 L. ed. 445, 449 (1925).

public making the connections at its own expense and absorbing the line losses (R. 184, 187-188).

Moreover, special contracts of carriage with selected producers, even if for hire, would not constitute Republic a "common" carrier.[7] As is said in 9 Am. Jur., "Carriers", §5, p. 432:

> " . . . in view of the requirement that the holding out must be to serve the public generally, one performing transportation service for a particular customer at prices fixed in each case by a specific contract, for a particular group or class of persons under a special contractual arrangement, or for a particular person only is not a common carrier. Neither is one a common carrier who carries for himself only . . ."

Finally, there is no evidence Republic ever attempted to or in fact exercised powers of eminent domain (see R. 183). The mere fact, not deemed by the Oklahoma Supreme Court of sufficient moment to warrant mention in its opinion, that on one occasion Republic obtained permission to lay pipes in a county road (R. 200; exhibits 19 and 20, R. 200-203, introduced at R. 200) is inconsequential. As was pertinently observed by the Utah Supreme Court in *Garkane Power Co. v. Public Service Commission,* 98 Utah 466, 100 P. (2d) 571, 574 (1940):

> "That it runs its lines along public roads under permission of the county or town is no indication that Garkane is a public utility any more than the

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7. *Michigan Public Utilities Comm. v. Duke, supra,* ft'n. 6, 266 U. S. 570; *Frost v. Railroad Commission,* 271 U. S. 583, 70 L. ed. 1101 (1926); *Smith v. Cahoon,* 283 U. S. 553, 75 L. ed. 1264 (1931); see *Washington ex rel. Stimpson Lumber Co. v. Kykendall,* 275 U. S. 206, 210-211, 72 L. ed. 241, 244 (1927); 13 C. J. S., "Carriers", §11, p. 41.

> permissive building on the public right-of-way of a platform for the collection of milk indicates that a dairy farmer is a public utility."

Nor, in any event, did the Oklahoma Supreme Court bottom its judgment, even alternatively or in part, upon the ground that Republic was a common carrier or common purchaser of gas. Instead, it held the Commission order valid, duly authorized by Oklahoma statutes, even though Republic was neither a common purchaser nor a common carrier (R. 458, lines 25-32; R. 461, lines, 19-26).

At the outset it is important, also, to bear in mind the rationale of the Commission order and Oklahoma Supreme Court judgment. The order was not issued or upheld to prevent "waste", there being no evidence whatever of waste — surface, underground, economic or otherwise. There is neither evidence nor contention, for example, that Republic's wells were being produced excessively or too rapidly so as to threaten Peerless' well with "coning" whereby water beneath the gas sands inundates the area of reduced pressure near the well base, repressing the lateral inflow of gas and drowning the well. There is no suggestion that the market to which Republic sold its gas was inimical to public welfare (and, in fact, the Commission order seeks to compel Republic to deliver Peerless gas to that very market). There is no evidence that Republic withdrew from the ground more gas than was justifiable. On the contrary, the Oklahoma Supreme Court conceded:

> "It also appears that Republic does not take from its producing gas wells any gas in excess of its determined allowable, as fixed by the Corporation Commission" (R. 457).

The instant order was not designed to prevent Republic's producing, gathering and selling the same amount of gas from the same source of supply which it had theretofore been producing, gathering and selling, but solely to enable Peerless to share Republic's market. That is to say, not the *quantum* of gas produced by Republic, but the *source* thereof, prompted the Commission's order designed entirely to protect Peerless' private "correlative rights" by preventing drainage of gas from beneath its well by Republic's production:

> " . . . obviously the present order, made after notice and a full hearing, was for the purpose of correcting an inequality in the taking of gas from said field whereby the correlative rights of Peerless were being infringed" (R. 463-464).

Actually, we submit the order does not even stem from the fact that Republic's were the wells causing the drainage. Had Republic, owning no gathering system, been delivering its gas at its well heads to an unaffiliated pipe line company under special contract of carriage, the same order would have issued — but would have been directed against the owner of the pipe line rather than Republic. Conversely, if all Republic's wells were owned and produced by a nonaffiliated corporation and if Republic merely transported the production from those wells to the market under private contract with the well owner, nevertheless the instant order would have been made. Hence, it is not Republic's status as a *producer* of gas, but the fortuitous fact that it is also a *gatherer* of the gas it produces, which subjected it to the Commission's asserted jurisdiction. By the same token, the order is not premised upon "wrongful" pro-

duction by Republic,[8] but upon the fact that the Peerless well is being drained, *regardless of by whom,* and that Republic possesses a market for gas, and owns an adjacent pipe line gathering system which, if compelled to accept, carry, and market gas from the Peerless well, will alleviate the drainage effects.

At all events, there was no conceivable *public* interest to be served by the instant Commission order. Republic, a private producer and gatherer of its own gas from its own wells, is commanded to purchase gas from Peerless, another private producer, and to carry the Peerless gas to Republic's own private market in its own private gathering system, thereby surrendering to Peerless a portion of Republic's private market and private facilities for reaching that market, such order being issued *solely* to safeguard the assumed *private* rights of Peerless. Note, too, that Peerless possesses neither any pipe line facilities of its own, *nor any market to which it might dispose of its gas even if it owned such facilities;* and the Commission's dog-in-the-manger order not only requires Republic to transport Peerless gas, but also that Republic *purchase* such gas from Peerless. Even an admitted common carrier may not be compelled to *buy* the commodities it is willing only to transport.

Why is that not an unwarranted taking of the private property of one person and awarding it, not even for public purpose, to another? Why is that not a depriva-

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8. Aside from the fact that Republic's production does not exceed the allowable amount assigned to its wells by the Commission (R. 457, lines 18-21), it is obvious Republic's are not the only wells causing the Peerless drainage. Many other wells producing from the same gas reservoir are also contributing thereto. And even if Republic's wells were completely shut in, those other wells would continue drawing gas from beneath the Peerless well (R. 101, lines 28-36; R. 121, lines 20-28).

tion of Republic's private property without due process of law and a denial to Republic of the equal protection of laws in violation of the Fourteenth Amendment to the Constitution of the United States?

Appellees (see their typewritten motion to dismiss this appeal) and the Oklahoma Supreme Court seek to defend the instant order as an exercise of the state's power to protect "correlative rights" by compelling "ratable taking" of gas. It would appear to be a fair statement of their position that any order which tends to promote "ratable taking to protect correlative rights" is necessarily valid.

With this we are unable to agree. We readily concede the state's power to require ratable taking to enforce correlative rights — by a proper order in a proper case. This power, however, is but ancillary to the fundamental right of the state to preserve its natural resources, and may, we submit, be exercised only when and to the extent that its application is needed to further state conservation measures.

Thus, in addition to its basic power to proscribe waste, the state may, in the interests of conservation, restrict the total amount of gas which may be produced within its borders. As a manifestly equitable adjunct to such a measure, the state may allocate such total allowable production among individual wells by some reasonable formula. As an example, see Laws 1915, Ch. 197, §4 (52 Okla. Stats. Ann. §239, p. 503, appendix, *infra*) which permits each well to produce only in the proportion which its natural flow bears to the total natural flow of all wells drilled into the common reservoir; and see *C. J. Julian Oil & Royalties Co. v. Capshaw*, 145 Okla. 237; 292 Pac. 841 (1930), upholding such an order by the Oklahoma

Corporation Commission. Such ratable taking measures, though, are not undertaken merely to protect private correlative rights, but because the state has, in the first instance, entrammeled total allowable production in order to conserve its resources, and must, as a necessary consequence, decree ratable taking so as fairly to distribute among individual well owners the burden of the basic limitation upon production. Such an order is ancillary to the basic proration measure, and issues because of the state's interest in attaining equitable apportionment of the productive restrictions it imposes.

In the case at bar, however, the Commission order does not serve to alleviate the effects of any basic conservation measure or to assure equitable apportionment of its burdens. Peerless' inability to produce its well is not due to any state imposed constraint, but entirely because Peerless has no market for its gas and no pipe line facilities for reaching such market as it might obtain. Even if there were no Oklahoma statutes or Commission orders limiting natural gas production, the Peerless predicament would be in no respect altered — save that Republic would then be producing more gas, and, hence, the drainage would be increased. In fine, "ratable taking" is ordered in the case at bar not to attain equitable distribution as between Peerless and Republic of the burdens of any state conservation measure, nor to further any possible interest of the state in preserving its natural resources, but solely to promote the private interests of Peerless.

This, we submit, is improper. Power to limit the quantum and rate of withdrawal, to protect correlative rights by requiring ratable taking, and to issue any of the sundry proration orders imposing restrictions upon the rights of individuals to the free and unfettered use of

their private property, emanates exclusively from the state's fundamental right to conserve its natural resources. It cannot exist independently of the state's concern with those resources. All proration orders, whether ordaining "ratable taking" or otherwise, are *conservation* measures, sustainable only when they pertain to conservation of natural gas. It necessarily follows that the Commission's power to promulgate orders in furtherance of state concern with conservation of its natural resources does not embrace *independent* authority to compel one private individual to purchase or transport the gas of another private individual solely to protect the latter's supposed personal rights. The Commission might as well have sought to compel the owner of one oil well to loan or rent his spare pumping jack to an adjoining well owner whose own jack had broken, who could not find or afford another, and whose inactive well was therefore suffering drainage.

Certainly the Oklahoma Supreme Court and present appellees have adduced no decision by any court upholding the right of a state to compel a private producer and gatherer of his own gas from his own wells, who neither purchases gas from nor transports gas for any other person, to purchase and carry gas from the well of another.

The Oklahoma Supreme Court asserts the instant order enforces ratable taking "in accordance with the principles announced in *Ohio Oil Co. v. Indiana*" (R. 459).[9]

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9. 177 U. S. 190, 44 L. ed. 729 (1900). This case involved no issue pertaining to ratable taking, but merely upheld a state commission order, made pursuant to Indiana statutes, prohibiting the unrestrained flow of gas from a well into the open air, and commanding the well owner to confine its gas "in tanks, pipes, or other proper receptacles" (177 U. S. at 197) — an unarguably proper recognition of the state's power to prevent sheer waste of its valuable natural resources.

This same opinion is cited by appellees, in the last paragraph of their typewritten motion to dismiss, for the proposition that in order to prevent waste and protect correlative rights a state commission may shut in a gas well. This power, where waste exists, we concede. Even a natural person may be "shut in" by the state for violating its lawful criminal codes. But in the case at bar there was no waste, the Commission's order being issued exclusively on behalf of the private "correlative rights of Peerless" (R. 464, lines 2-3). The cited decision constitutes no precedent whatever for the judgment in the case at bar.

Champlin Refining Company v. United States, 329 U. S. 29, 91 L. ed. (Adv. Sheet) 9 (1946), upon which appellees and the Oklahoma Supreme Court (R. 461) rely, does not support their contentions, but expressly leaves open the issue raised by the judgment at bar. That opinion, interpreting Section 19(a) of the Interstate Commerce Act and involving the interstate commerce powers of Congress, merely held a private pipe line company might be compelled by the Interstate Commerce Commission to furnish *information*. In its opinion this Court was careful to emphasize it did not intend thereby to uphold the Commission's power to impose common carrier-like obligations upon the appellant:

> "Appellant further contends that, as so construed, the Act exceeds the commerce power of Congress and violates the Fifth Amendment because it is argued that this interpretation converts a private pipe line into a public utility and requires a private carrier to become a common carrier. But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common

carrier status but is quite as extensive over a private carrier. [It does not follow that a state is imbued with comparable jurisdiction over persons engaged in intrastate commerce.] *This power has yet been invoked only to the extent of requiring Champlin to furnish certain information* as to facilities being used in interstate marketing of its product. The commerce power is adequate to support *this* requirement whether appellant be considered a private carrier or a common carrier.

"The contention that the statute as so construed violates the due process clause by imposing upon a private carrier the obligations of a conventional common carrier for hire is too premature and hypothetical to warrant consideration on this record. *The appellant in its entire period of operation has never been asked to carry the products of another and may never be.* So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider the concrete requirements and their specific effects on appellant. At present, appellant is asked only to provide information about a subject within the power possessed by Congress and delegated to the Commission, and that cannot be considered a taking of property even if it arouses appellant's premonitions." (91 L. ed., Adv. Sheet, p. 12; our italics)

Subject to precisely this same distinction *Valvoline Oil Company v. United States,* 308 U. S. 141, 81 L. ed. 151 (1939), where the same type of "informational" order was reviewed. In addition, the appellant there was not solely a transporter of its own oil, its factual situation being similar to that of the 5 unsuccessful appellants in *The Pipe Line Cases,* 234 U. S. 548, 58 L. ed. 1459 (1914), rather than to that of the *Uncle Sam Oil Company:*

> ". . . that company's [Uncle Sam Oil Company's] pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determines the applicability of the statute to Valvoline." (308 U. S. at 146)

As for *The Pipe Line Cases* themselves, they did not sustain the imposition upon private carriers of an obligation to transport for other persons without the carriers' consent, but held, only that Congress in the exercise of its interstate commerce powers could "require those who are common carriers in substance to become so in form" (234 U. S. at 561); the only *private* carrier there involved, The Uncle Sam Oil Company, was exempted by this Court from subjection to the statute there under consideration.

The four decisions immediately hereinbefore discussed constitute all of the authorities relied upon by instant appellees and the Oklahoma Supreme Court as justifying the present Commission order. Yet not one is of precedential value here. Nor has our research disclosed any decision by any court which even tends to support the judgment at bar. On the other hand, we submit that *Texoma Natural Gas Co. v. Railroad Commission*, 59 F. (2d) 750 (W. D. Texas, 3 Judge Court, 1932), *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, 81 L. ed. 510 (1937), and *The Uncle Sam Oil Company* decision, *supra*, 234 U. S. 548, sustain our contention that the Oklahoma statutes and Commission order may not constitutionally be applied to this appellant.

It is an indubitable rule that, as is said in 3 Honnold, *Supreme Court Law* (1933), p. 1974:

> "A private carrier cannot be converted into a common carrier by mere legislative command."

Illustrative of this fundamental principle are countless court decisions, including many by this Court.[10] For example, see *Producers Transportation Co. v. Railroad Comm.*, 251 U. S. 228, 230, 64 L. ed. 239, 242 (1920):

> "It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, that is, to carrying for the public, the state could not, by mere legislative fiat or by any regulating order of a commission, convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clauses of the 14th Amendment."

Squarely in point here, we submit, is *Texoma Natural Gas Co. v. Railroad Commission of Texas, supra*, 59 F. (2d) 750, the facts of which are indistinguishably parallel to those of the case at bar. That was an action to enjoin the Texas Railroad Commission from enforcing sections 8a and 8aa of the Texas Common Purchaser Act, which sections are fully analogous to sections 2 and 3 of Chapter 198 of the Oklahoma Session Laws of 1913 (59 F. 2d at 751). Plaintiffs there were nonresident corporations authorized to do business in Texas.

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10. *Michigan Public Utilities Comm. v. Duke*, 266 U. S. 570, 577-578, 69 L. ed. 445, 450, 36 A. L. R. 1105 (1925); *Frost v. Railroad Commission*, 271 U. S. 583, 592, 70 L. ed. 1101, 1104, 47 A. L. R. 457 (1926); *Washington ex rel. Stimpson Lumber Co. v. Kykendall*, 275 U. S. 207, 210-211, 72 L. ed. 241, 244 (1927); *Smith v. Cahoon*, 283 U. S. 553, 75 L. ed. 1264 (1931). In general, see 9 Am. Jur., "Carriers", §29, p. 445.

They owned and produced gas wells in Texas, gathered their own gas from their own wells in their own gathering systems, and transported that gas to points outside the state of Texas where they sold it under contract to various purchasers (59 F. 2d at 751). They were not purchasers of gas, and their lines were not used to transport gas for others (59 F. 2d at 751). In addition, the three judge court found as follows:

> "We further find that there are embraced within the particular gas field from which plaintiffs are supplying their demands many owners of lands and leasehold interests who are at present without market outlet; that, should the plaintiff [sic] continue to drill their own territory according to declared intent, eventually their own and *the contiguous territories of others will be drained of gas.*" (59 F. 2d at 752; our italics)

In holding the statute unconstitutional, and enjoining enforcement of a proposed commission order fully comparable to the one now under attack, the court said:

> "From these facts we conclude that the plaintiffs are private pipe line carriers who have not devoted their property to the public use for hire or compensation . . . The act is all-embracing, and includes both common and private carriers of gas by pipe line. The carrier's private status is changed to that of public by the declaration of the act alone. The Legislature is without power to do this. It is taking private property for public use without just compensation, inconsistent with the due process of law clauses of the Fourteenth Amendment to the Constitution. (Citations)" (59 F. 2d at 753)
>
> "While the act purports to conserve oil and gas as natural resources of the state, defendants concede that plaintiffs' operations do not result in waste . . .

"The act requires pipe-line carriers of gas to assume the obligations not only of common carriers but those of common purchasers. It presumes that only the interstate pipe lines in this field have market outlets; that others therein are without capital, and cannot reach distant markets; that, unless plaintiffs are forced by law to purchase gas from others in the same field and compelled to extend lines to producing wells to take the gas purchased from others, *the gas appertaining to their areas will ultimately be drained by plaintiffs' wells.*

"Or, as admitted by defendants, the purpose of the act is to compel pipe line producers to share their markets with producers in the same field who are without market, by requiring them to purchase. *The equitable principle of correlative rights or ratable taking of gas from a common pool is sought to be applied through compulsory purchase.* The act requires a private carrier engaged in interstate commerce to assume the responsibilities of a common carrier and those of a common purchaser. This invades the field of federal cognizance, interferes with and burdens the commerce between the states, contrary to article 1, §8, of the Federal Constitution. (Citations)" (59 F. 2d at 753, our italics)[11]

"We are of opinion that the mentioned sections of the act and rules of the Commission which refer to gas generally, and specifically to the West Panhandle gas field, are void and unenforceable against the plaintiffs, as in conflict with the Federal and state Constitutions . . .

"The plaintiffs are entitled to their injunctive relief as prayed." (59 F. 2d at 754)

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11. This identical assertion was voiced by Republic in the case at bar (see R. 463, first full par. by Okla. Sup. Ct.).

The only factual difference between the Texoma case and the one at bar is that there plaintiffs were using the maximum capacities of their lines in making contractual deliveries to their markets, whereas here the Oklahoma Supreme Court found Republic's market requirements were not utilizing the full capacity of its gathering system (R. 457, lines 14-16).[12] But the constitutional principle would be the same even were Republic's private gathering system capable of handling twice its present load. Moreover, and in any event, the market which Republic is ordered to share with Peerless is not sufficient even to enable Republic to dispose of all its allowable production from its own wells (see R. 167, R. 442).

The *Texoma* decision merited this Court's approval in *Thompson v. Consolidated Gas Utilities Corp., supra,* 300 U. S. 55, the following excerpts from the opinion of Mr. Justice Brandeis in the latter case being illustrative of its instant pertinency:

> "And as to the order, the plaintiffs assert that, while restrictive in form, it is in fact coercive; that its purpose and effect are not to prevent waste of gas in the common reservoir nor to prorate the opportunities of production as distinguished from marketing; that the limitation of the production of the wells is merely a device to compel the individual plaintiffs, and other pipe line owners, to purchase gas for which they have no need; that the real purpose and effect of the order are to prorate not production, but distant markets and the facili-

12. *Quaere* upon what evidence this recital is premised. Compare R. 181, lines 40-42, and R. 183, 213. In fact, Republic has been forced to expend $100,000 augmenting its gathering system in order to render it capable of handling Republic's contractual delivery requirements (R. 183).

ties for serving them; and that, thus, the order takes their property without warrant in law." (300 U. S. at 67-68)

"The defendants contend, apparently, that House Bill 266 should be construed as authorizing the Commission to reduce the production of the plaintiffs and of other pipe line owners, even if the sole purpose of doing so is to furnish a market for the sweet gas of those wells now without pipe line connections [300 U. S. at 73] . . . we are clearly of opinion that if the Act were construed as the defendants contend it should be, and as the Commission has applied it, it would violate the Federal Constitution . . ." (300 U. S. at 75)

"Every well owner in the field is free to produce the gas, provided he does not do so wastefully. He is legally and, so far as appears, physically free to provide himself with a market and with transportation and marketing facilities. There is no basis for a claim that his right, or opportunity, will be interfered with by a disproportionate taking by any one of those who may legally produce.

"' . . . the purpose of the Commission underlying the orders was, upon a theory of protecting correlative rights, to coerce complainant and other (others) similarly situated to buy gas from, and thus to share their private marketing contracts and commitments and the use of their pipe lines and other facilities for transmitting their gas to market with, the owners of wells not now connected to pipe lines, who have not contributed in money, services, negotiations, skill, forethought or otherwise to the development of such markets and the construction of such pipe lines and other facilities. In short to compel complainants to afford markets to those having none." (300 U. S. at 77-78)

"The use of the pipe line owner's wells and reserves is curtailed solely for the benefit of other

private well owners. The pipe line owner, a private person, is in effect, ordered to pay money to another private well owner for the purchase of oil which there is no wish to buy . . . Plaintiffs' pipe lines are private property. So far as appears, they are constructed on private lands. There is no suggestion that any of them is a common carrier of gas. The purpose of the owners in constructing the pipe lines was for the transport of gas only from their own leases, and such has been their consistent policy . . .

"The purpose of this order is the same as that which the Legislature sought to achieve by the 'Common Purchaser Act,' of August 12, 1931, held unconstitutional in *Texoma Natural Gas Co. v. Railroad Commission* (D. C.) 59 F. (2d) 750 . . . There is a difference in the means employed; but the difference is not of legal significance. The 1931 Act attempted to compel the purchase by frankly commanding it, under sanctions criminal and civil. The 1935 Act operates by indirection . . .

"Our law reports present no more glaring instance of the taking of one man's property and giving it to another." (300 U. S. at 78-79)

Let it be frankly conceded there is one noticeable distinction between the facts hereof and those of the *Thompson* case. There, through a geological anomaly created by antecedent production, gas migration as a whole was from the wells connected to pipe lines and towards the unconnected wells (300 U. S. at 72). And the opinion contains generalized *dicta* (for example, 300 U. S. at 76-77) which suggest, or, rather, "assume" (300 U. S. at 76) a different result might follow were unconnected wells being drained by those producing into pipe lines. However, we submit this distinction is, from a constitutional standpoint, of no significance. We have,

we believe, already demonstrated herein that the state has no proper concern with private drainage as such, save as a subsidiary problem appertaining to equitable allocation among well owners of the burden of some basic conservation measure. Where, as in the case at bar, such drainage as occurs is causing no injury whatever to the state or to its natural resources, and Peerless' subjection thereto is in no part attributable to any state conservation statute or commission order restricting the quantum or rate of gas withdrawals, the migration of gas from beneath the Peerless well does not call into operation the exercise of state jurisdiction (as delegated to the Corporation Commission) to invade Republic's private rights in the interests of gas conservation, nor, by the same token, does it justify a Commission order requiring Republic to purchase and transport Peerless gas. Now that the issue is squarely before this Court for decision, we submit the rule announced by the three judge court in the *Texoma* case should be adopted.

It is submitted the Commission order enjoining Republic, a private producer and a private gatherer of its own gas from its own wells in its own pipeline gathering system, to purchase and transport Peerless gas, is an infringement of Republic's constitutional rights, and that the Oklahoma Supreme Court judgment sustaining such order should be reversed.

II.

Republic, a Foreign Corporation, is Not Estopped to Assert Unconstitutionality of the Oklahoma Statutes and Commission Order Applying Them, Merely Because the Statutes Antedated Republic's Authorization to Transact Business in Oklahoma.

The Oklahoma Supreme Court held, alternatively, that even if the statutes were, under the *Texoma* and *Thompson* decisions, unconstitutional as applied to Republic by the Commission's order, nevertheless Republic was precluded from so contending by having accepted the privilege of doing business in Oklahoma at a time when the statutes were in purported force and effect (R. 462), citing in support of its holding *Pierce Oil Corporation v. Phoenix Refining Co.*, 259 U. S. 125, 66 L. ed. 855 (1920), affirming 79 Okla. 36, 190 Pac. 857 (1920). We submit this ruling is erroneous, and that Republic may not be denied its constitutional rights by an improper application of the doctrines of waiver or estoppel by the Oklahoma Supreme Court.

(a). Mere Acceptance by a Foreign Corporation of the Privilege of Doing Business in a State Does Not Entail Submission to Existing State Statutes Which Are Unconstitutional.

There is, as we shall more fully demonstrate hereinafter, no evidence in this record that Republic affirmatively accepted, consented to be bound by, or waived its right to object to, any Oklahoma statutes in presumptive effect at the time Republic qualified to do business in the state (R. 462, lines 32-35; R. 219-220). The "con-

sent" upon which the Oklahoma Supreme Court relied was not an actual waiver, express or implied in fact, but one constructed by implication of law from the mere fact of Republic's entry into the state:

> "Having entered this state and obtained the privilege of conducting its business operations therein when said laws were in full force and effect, it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional" (R. 462, lines 32-27).

But it is well settled that a foreign corporation, by accepting the privilege of doing business in a state, does *not* thereby waive the right or become estopped to attack existing statutes as unconstitutional.[13]

Thus, it is said in *W. W. Cargill Co. v. Minnesota* ex rel. *Railroad & W. Comm.*, 180 U. S. 452, 468, 45 L. ed. 619 (1900):

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13. *Phillips Petroleum Co. v. Jenkins*, 297 U. S. 629, 80 L. ed. 943 (1936); *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389, 72 L. ed. 927 (1928); *Power Mfg. Co. v. Saunders*, 274 U. S. 490, 71 L. ed. 1165 (1927) — see Case Note, 41 Harv. L. Rev. 95; *Frost v. Railroad Comm.*, 271 U. S. 583, 70 L. ed. 1101 (1926); *Fidelity & D. Co. v. Tafoya*, 270 U. S. 426, 70 L. ed. 664 (1926); *Terral v. Burke Construction Co.*, 257 U. S. 529, 66 L. ed. 352 (1922); *Union Pacific R. Co. v. Public Service Commission*, 248 U. S. 67, 63 L. ed. 131 (1918); *Canadian Pac. Ry. Co. v. Sullivan*, 126 F. (2d) 433 (C. C. A. 1, 1942), *cert. den.* 316 U. S. 696, 86 L. ed. 1766; *Northwestern Nat. Ins. Co. of Milwaukee, Wis. v. Lee*, 49 F. (2d) 274 (D. Oregon, 3 Judge Court, 1931); see *Hanover Fire Ins. Co. v. Carr*, 272 U. S. 494, 71 L. ed. 372 (1926) and Case Note in 40 Harv. L. Rev. 777; *W. W. Cargill Co. v. Minnesota ex rel. Railroad & W. Comm.*, 180 U. S. 452, 45 L. ed. 619 (1900); *Springfield Fire & Marine Ins. Co. v. Holmes*, 32 F. Supp. 964 (D. Mont., 3 Judge Court, 1940), *rev. on other grounds*, 311 U. S. 606, 85 L. ed. 384, *reh. den.* 311 U. S. 726, 85 L. ed. 473; *cf. Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55, 80-81, 81 L. ed. 510 (1937); *Kentucky Finance Corp. v. Paramount Auto Exch. Corp.*, 262 U. S. 544, 67 L. ed. 1112 (1923), and *Spaulding v. Douglas Aircraft Co.*, 154 F. (2d) 419 (C. C. A. 9, 1946).

> "The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or comply with any provisions of the statute or with any regulations prescribed by the state railroad and warehouse commission that are repugnant to the Constitution of the United States. A license will give the defendant full authority to carry on its business in accordance with the valid laws of the state, and the valid rules and regulations prescribed by the commission."

Mr. Justice Van Devanter wrote for this Court in *Power Mfg. Co. v. Saunders*, 274 U. S. 490, 497-498, 71 L. ed. 1165 (1928):

> "The contention advanced by counsel for the plaintiff that the defendant impliedly assented to the venue provisions is answered and refuted by repeated decisions holding that a foreign corporation by seeking and obtaining permission to do business in a state does not thereby become obligated to comply with or estopped from objecting to any provision in the state statutes which is in conflict with the Constitution of the United States."

To the same effect is *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389, 400-401, 72 L. ed. 927 (1928):

> "It is established that a corporation, by seeking and obtaining permission to do business in a state does not thereby become bound to comply with, or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States."

And see the summation of authorities in *Northwestern Nat. Ins. Co. v. Milwaukee, Wis. v. Lee*, 49 F. (2d) 274, 279 (D. Oregon, 3 Judge Court, 1931):

> " . . . the courts with practical unanimity, hold that a foreign corporation, once having been permitted to enter a state and engage in business, has a right to invoke the Fourteenth Amendment against unjust discriminations whether they arise under legislation passed after its permit or before. We think this is settled by the decision in *Liggett v. Baldridge*, 278 U. S. 389, 48 S. Ct. 553, 72 L. ed. 927, as to legislation enacted before the foreign corporation was permitted to do business in the state."

The only two decisions assertedly to the contrary upon which appellees rely — *Pierce Oil Corp. v. Phoenix Refining Co., supra*, 259 U. S. 125, and *The Pipe Line Cases, supra*; 234 U. S. 548 — are plainly distinguishable.

In *Pierce Oil Corp. v. Phoenix Refining Co., supra*, 259 U. S. 125, decided prior to crystallization of the principle announced in the cases immediately hereinbefore cited, the foreign corporation not only acquired the privilege of doing business in Oklahoma, *but also filed with the Oklahoma Corporation Commission an affirmative acceptance of the provisions of the statute it later sought to attack* (259 U. S. at 127). It applied for and obtained an order temporarily exempting it from the provisions of the act, thereby acknowledging appreciation of the fact that its operations were within the statute's ambit (259 U. S. at 129). It exercised the privilege of eminent domain which the assailed statute accorded (190 Pac. at 859). It was admittedly engaged in transporting oil of other persons for hire, and was a common carrier in fact (190 Pac. at 858; 259 U. S. at 126) — see, as to this feature, *In re Champlin Refining Co.*, 129 Okla. 166, 264 Pac. 160, 161 (1928):

> ". . . *Pierce Oil Corporation v. Phoenix Ref. Co.*, 79 Okla. 36, 190 Pac. 857, affirmed in 259 U. S. 125, 42 S. Ct. 440, 66 L. ed. 855. That case involved the question of regulation of the Pierce Oil Corporation by the State Corporation Commission as a common carrier by virtue of having operated its pipe lines for the transportation of crude oil for hire . . ."

The Commission's order in the *Pierce* case was "*plainly* within the scope of the statute in effect when it entered the state" (259 U. S. at 128; our italics). Finally, this Court there placed considerable reliance upon:

> ". . . the large discretion which the state had to impose terms upon this foreign corporation as a condition of permitting it to engage in *wholly intrastate business* . . ." (259 U. S. at 128; our italics)[14]

Since Pierce Oil Corporation was there transporting for hire oil owned by other persons, and not hauling merely oil from its own wells, its constitutional objections must be viewed in a different light than those of present appellant.[15] And, in any case, the affirmative acceptance of the statute in the *Pierce* case deprives that decision of current relevancy. In this connection, see *Spaulding v. Douglas Aircraft*, 154 F. (2d) 419, 422 (C. C. A. 9, 1946):

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14. Contrast the case at bar where most of Republic's Oklahoma gas production was gathered and carried across the state line to Kansas where it was sold, under contract, to Northern Natural Gas Company (R. 168; R. 456, lines 3-8, and R. 457; lines 24-28). Under the instant facts Oklahoma's "discretion" was extremely limited: *West v. Kan. Natural Gas Co.*, 221 U. S. 229, 55 L. ed. 716 (1911), and *Haskell v. Kan. Natural Gas Co.*, 224 U. S. 218, 56 L. ed. 739 (1912).

15. Compare *Valvoline Oil Company v. United States*, 308 U. S. 141, 146, 81 L. ed. 151 (1939), *supra*.

"Here was no such an agreement to waive a claim of unconstitutionality as in *Pierce Oil Co. v. Phoenix Refining Co.*, 259 U. S. 125, 127, 42 S. Ct. 440, 66 L. ed. 855 . . .

"The situation is entirely different from those in the estoppel cases relied upon by appellees. In each of these the party contending the unconstitutionality of the statutes involved had acted *affirmatively* to procure a benefit from such statutes." (Court's own emphasis)

As for the famous *Pipe Line Cases, supra,* 234 U. S. 548, appellees here are relying upon a single sentence in the opinion of Mr. Justice Holmes which was formulated during discussion of the rights of only five of the six appealing pipe line companies, those being the five which were in fact, although not in form, common carriers, and to whom, *without resort to estoppel,* it was held the statute had constitutional application:

"The control of Congress over commerce among the states . . . may require those who are common carriers in substance to become so in form. So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. [This is the sentence stressed by appellees in the case at bar.] So the objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we have already intimated, those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipe lines . . . There is no taking and it does not become necessary to consider how far Congress could subject them to pecuniary loss without compensation in order to accomplish the end in view." (234 U. S. at 561)

But in discussing the rights of The Uncle Sam Oil Company, the only *private* carrier involved in *The Pipe Line Cases,* Mr. Justice Holmes does not so much as intimate that future *private* carriers may raise no objection to a statute which seeks to impose upon them the obligations of common carriage. The statute there under consideration merely compelled carriers common in substance to become so in form, and it was held constitutionally applicable even to common carriers whose operations antedated the Congressional enactment. Since neither a subsequent pipe line, nor an unconstitutional statute, nor, in any event, a *private* carrier was before the Court in the five appeals wherein the above-quoted language was spoken, that language cannot support the present Oklahoma Supreme Court judgment. Even were the quoted statement to be construed as expressing an opinion pertaining to the right of a subsequent *private* carrier to assail a statute unconstitutional as applied to it, such opinion would be sheer *dictum.* Moreover, Congressional jurisdiction over corporations desiring to engage in interstate commerce may not be likened to state rights touching admission of foreign corporations — especially those which enter the state to engage, for the most part, in interstate business.

At all events, the authorities hereinbefore cited, all decided subsequent to the *Pierce* and *Pipe Line* cases, clearly refute the principle upon which the Oklahoma Supreme Court sought alternatively to place its judgment.

(b). A State May Not Impose Upon a Foreign Corporation, as a Condition of Admission, a Waiver of the Corporation's Right to Assail Unconstitutional Statutes.

In their typewritten motion to dismiss, appellees cited one decision, *Washington* ex rel. *Bond & T., Inc. v. Superior Court*, 289 U. S. 361, 77 L. ed. 1256 (1933), for the proposition that a state may constitutionally impose upon a foreign corporation seeking admission thereto a requirement that the corporation accede to the provisions of existent statutes.

Again, however, appellees fail to appreciate the determinative feature of the case at bar. True, a state may require entering corporations to accept *valid* existing enactments; and acceptance by the corporation of such a condition precludes its right thereafter to contest such statutes. But if the statutes are *unconstitutional*, then a state may *not* exact from a foreign corporation a surrender of its right to resist them, and acceptance of the privilege of doing business does not estop the corporation from asserting its constitutional rights even though it accedes to the state's wrongful demands and consents to be bound by the unlawful enactments.

The very authority cited by appellees itself recognizes this rule:

> "It has repeatedly been said that qualification of a foreign corporation in accordance with the statutes permitting its entry into the State constitutes an assent on its part to all the *reasonable* conditions imposed. (Citations) It is true that the corporation's entry may not be conditioned upon surrender of constitutional rights, as was attempted in the cases upon which the appellant relies. (Citations) And for this reason a State may not exact arbitrary and

unreasonable terms respecting suits against foreign corporations as the price of admission. (Citation) But the statute here challenged has no such operation."[16]

If, as this appellant contends and this Court is asked to determine, the statutes and the order attacked in the case at bar are unconstitutional as applied to Republic, then it is undeniable that Oklahoma was without authority to require Republic to submit thereto, and that, even had Republic expressly consented to such a condition in consideration of its admission to do business in Oklahoma, nevertheless its right, now, to resist the statutes and order must remain inviolate.[17]

Mr. Chief Justice Taft stated the applicable principle thus, in *Terral v. Burke Construction Co., supra,* 257 U. S. at 532:

"The principle established by the more recent decisions of this court is that a state may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the state, exact from it a waiver of the exercise of its constitutional right

16. *Washington* ex rel. *Bond & G. & T., Inc. v. Superior Court, supra,* 289 U. S. at 364-365; emphasis supplied.

17. *Phillips Petroleum Co. v. Jenkins, supra,* 297 U. S. 629, 80 L. ed. 943; *Quaker City Cab Co. v. Pennsylvania, supra,* 277 U. S. 389, 72 L. ed. 927; *Power Mfg. Co. v. Saunders, supra,* 274 U. S. 490, 71 L. ed. 1165, and Case Note in 41 Harv. L. Rev. 95; *Hanover Fire Ins. Co. v. Carr, supra,* 272 U. S. 494, 71 L. ed. 372, and Case Note in 40 Harv. L. Rev. 777; *Frost v. Railroad Comm., supra,* 271 U. S. 583, 70 L. ed. 1101; *Fidelity & D. Co. v. Tafoya, supra,* 270 U. S. 426, 70 L. ed. 664; *Kentucky Finance Corp. v. Paramount Auto Exch. Corp., supra,* 262 U. S. 544; 67 L. ed. 1112; *Terral v. Burke Construction Co., supra,* 257 U. S. 529, 66 L. ed. 352; *Union Pacific R. Co. v. Public Service Comm., supra,* 248 U. S. 67, 63 L. ed. 131; *Canadian Pac. Ry. Co. v. Sullivan, supra,* 126 F. (2d) 433; *Northwestern Nat. Ins. Co. of Milwaukee, Wis. v. Lee, supra,* 49 F. (2d) 274; and *Springfield Fire & Marine Ins. Co. v. Holmes, supra,* 32 F. Supp. 964.

to resort to the Federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, *whether waived in advance or not.*" (Our italics)

To the same effect is *Hanover Fire Ins. Co. v. Carr, supra,* 272 U. S. at 507:[18]

"The general principle . . . that foreign corporations cannot do business in a state except by the consent of the state; that the state may exclude them arbitrarily or impose such conditions as it will upon their engaging in business within its jurisdiction. But there is a very important qualification to this power of the state, the recognition and enforcement of which are shown in a number of decisions of recent years. That qualification is that a state may not exact as a condition of the corporation's engaging in business within its limits that its rights secured to it by the Constitution of the United States may be infringed."

Accord also is *Frost v. Railroad Comm., supra,* 272 U. S. at 596 and 598:

"For, conceding the right of a state to exclude foreign corporations, we must not overlook the limitation upon that right, now equally well settled in the jurisprudence of this court, that the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the Federal Constitution."

"And the principle, that a state is without power to impose an unconstitutional requirement as a con-

18. The proposition for which appellees and the Oklahoma Supreme Court in the case at bar cite *Pierce Oil Corp. v. Phoenix Refining Co., supra,* 259 U. S. 125, is expressly repudiated in the *Hanover* decision — 272 U. S. at page 516.

dition for granting a privilege, is broader than the applications thus far made of it."

See, too, *Quaker City Cab Co. v. Pennsylvania, supra,* 277 U. S. at 400-401:

> "It is established that a corporation by seeking and obtaining permission to do business in a state does not thereby become bound to comply with, or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States. The right to withhold from a foreign corporation permission to do local business therein does not enable the state to require such a corporation to surrender the protection of the Federal Constitution."

A fortiori, here, where Republic's business undertakings are largely interstate, the State of Oklahoma could not lawfully exact from Republic any waiver of its fundamental right to attack unconstitutional Oklahoma statutes, and even had Republic expressly consented to be bound thereby its very assent would have been vitiated with illegality.

(c). In Any Event, the Instant Commission Order Should be Considered as Subsequent Legislation to Which the Doctrines of Waiver and Estoppel are Inapplicable.

Both appellees and the Oklahoma Supreme Court apparently concede the rule of estoppel upon which they alternatively rely does not, as assuredly it could not, apply with respect to a statute enacted after Republic had qualified to do business in Oklahoma. Manifestly a corporation may resist subjection to subsequent unconstitutional enactments, including amendments to prior

legislation.[19] This right likewise embraces the subsequent *application* of statutes to a foreign corporation, resulting from new administrative or judicial interpretation, even though the statutes themselves were in existence at the time the corporation acquired its right to do business in the state.[20] In this connection, it appears to be settled law that the mere application of a statute to a particular person under a particular state of facts may present a federal constitutional issue, without regard to whether the statute might be upheld as applied to a different person or under a different set of facts.[21]

Prior to the instant Commission order, the subject statutes had never been interpreted or applied to facts remotely analogous to those of the case at bar, either by the Oklahoma Supreme Court or by the Oklahoma Corporation Commission. In fact, the specific statutes of 1913 and 1915 upon which the Commission order purports to rest had never, prior to the present proceedings, been construed or applied to *any* factual situation whatever. And undeniably the instant order inaugurated the attempted application to Republic of the controversial Oklahoma enactments:

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19. *Bacardi Corp. v. Domenech*, 311 U. S. 150, 85 L. ed. 98 (1940); *Connecticut Gen. Life Ins. Co. v. Johnson*, 303 U. S. 77, 82 L. ed. 673 (1938); *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 73 L. ed. 147 (1928); *Hanover Fire Ins. Co. v. Carr, supra*, 272 U. S. 494, 71 L. ed. 372; *Springfield Fire & Marine Ins. Co. v. Holmes, supra*, 32 F. Supp. 964.

20. *Connecticut Gen. Life Ins. Co. v. Johnson, supra*, ft'n. 19, 303 U. S. 77; *Hanover Fire Ins. Co. v. Carr, supra*, ft'n. 19, 272 U. S. 494; *cf. Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673, 74 L. ed. 1107 (1930).

21. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 66 L. ed. 239 (1921); *Fidelity & D. Co. v. Tafoya, supra*, 270 U. S. 426, 70 L. ed. 664; *Fiske v. Kansas*, 274 U. S. 380, 71 L. ed. 1108 (1927).

"In the previous orders of the Commission . . . neither expressly nor by inference was any requirement made upon Republic to take gas from any wells except its own" (R. 455).

Therefore, we submit that order is open to attack by Republic under the rule of *Connecticut Gen. Life Ins. Co. v. Johnson, supra,* 303 U. S. 77, 82 L. ed. 673.

In addition, the Commission's order is itself legislative in character, and a "statute" within the meaning of the Fourteenth Amendment to the Federal Constitution.[22] By the same token, that order constitutes a "subsequent statute" which Republic is free to assail without impediment from the doctrine of estoppel.

In this connection, it should perhaps be pointed out that although the Commission's order was legislative in its inception, having thereafter been subjected to judicial review by the Oklahoma Supreme Court it became, thereby, transformed into a "suit" within the requirements of Section 237 (a) of the Judicial Code.[23]

Nor, we hasten to forfend, is there any question but that the Oklahoma Supreme Court's review herein was judicial. This Court's decision in *Southwestern Bell Teleph. Co. v. Oklahoma,* 303 U. S. 206, 82 L. ed. 751 (1938), germinated from sections 20 through 23, and,

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22. *Sultan Ry. & T. Co. v. Department of Labor and Ind.*, 277 U. S. 135, 72 L. ed. 820 (1928); *King Mfg. Co. v. Augusta*, 277 U. S. 100, 72 L. ed. 801 (1928); *Hamilton v. U. of California*, 293 U. S. 245, 79 L. ed. 343 (1934); *reh. den.* 293 U. S. 633, 79 L. ed. 717; *Live Oak Water Users' Asso. v. Railroad Comm.*, 269 U. S. 254, 70 L. ed. 305 (1926); *Northern Pac. R. Co. v. Department of Public Works*, 268 U. S. 39, 69 L. ed. 836 (1925); *Bluefield Water Works & Improv. Co. v. Public Service Comm.*, 262 U. S. 679, 67 L. ed. 1176 (1923); *Lake Erie & W. R. Co. v. State P. U. Comm. ex rel. Cameron*, 249 U. S. 422, 63 L. ed. 484 (1919).

23. *Old Colony Trust Co. v. Comm'r.*, 279 U. S. 716, 73 L. ed. 918 (1932).

especially section 23, of Article IX of the Oklahoma Constitution.[24] The principle there applied has since been strictly confined to rate and traffic classification orders governing transmission companies.[25] Furthermore, following this Court's decision in the *Bell Telephone Company* case, the Oklahoma Legislature, pursuant to unique authority conferred upon it by the Oklahoma Constitution,[26] amended the aforesaid provisions of the state constitution in 1941 so that today, in all instances, the Oklahoma Supreme Court's review of any Corporation Commission order is judicial.[27]

At page seven of their typewritten motion to dismiss this appeal, appellees asserted that "on numerous occasions" both the Oklahoma Supreme Court and Corporation Commission had made:

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24. These constitutional sections governed only appeals from orders concerning, "rates, charges, or the classification of traffic of any transportation or transmission company" (Okla. Const. Ann., Art. IX, §23).

25. See *Oklahoma Packing Co. v. Oklahoma G. & E. Co.*, 309 U. S. 2, 84 L. ed. 536 (1940); *Oklahoma Cotton Ginners' Ass'n. v. State*, 174 Okla. 243, 51 P. (2d) 327 (1935); *Cary v. Corporation Comm. of Okla.*, 17 F. Supp. 772 (W. D. Okla., 1936).

26. " . . . the Legislature may, by law, from time to time, alter, amend, revise, or repeal sections from eighteen to thirty-four inclusive, of this article, or any of them, or any amendments thereof." (Okla. Const. Ann., Art. IX, §35.

27. L. 1941, §6, p. 547, 28 April 1941 (Okla. Const. Ann., Pocket Supp., Art. IX, §23) repealed former §23; and former sections 20, 21, and 22 were amended, respectively, by L. 1941, §1, p. 544, §2, p. 545, and §3, p. 545 (Okla. Const. Ann., Pocket Supp., Art. IX, §§20, 21, and 22). The presently controlling statute (L. 1941, §1, p. 544, Okla. Const. Ann., Pocket Supp., Art. IX, §20) now provides:

"The Supreme Court's review of appealable orders of the Corporation Commission *shall be judicial only*, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts." (Our emphasis)

". . . identical applications of the statutes involved prior to the time that appellant qualified to do business in the State of Oklahoma."

But the record herein flatly contradicts that statement. In the instant order the Commission itself confesses:

"This statute [Laws 1913, Chapter 198] has never been directly interpreted by any court . . ." (R. 414, lines 17-18)

And the Oklahoma Supreme Court makes an identical concession:

"So far as we have been able to find this court has never been called upon to construe and apply the provisions of these sections." (R. 459, lines 28-30)

Moreover, the Oklahoma Supreme Court was in error when it said:

"However, we have had occasion to consider *similar* situations under other conditions, and other statutes." (R. 459, lines 30-33; our emphasis)

The "other decisions" construing "other statutes" under "other conditions", of which appellees and the Oklahoma Supreme Court irrelevantly contend Republic had knowledge at the time it qualified to do business in Oklahoma, cannot gainsay the fact that the *instant statutes* were never construed or applied prior to inception of the proceedings at bar. Nor, we submit, are the mentioned decisions even distantly relevant here.

Thus, *Oklahoma Natural Gas Corporation v. State*, 161 Okla. 104, 17 P. (2d) 488 (1932), appellees' chief

reliance,[28] upheld an order, issued pursuant to a 1921 Oklahoma statute, directing two *common purchasers in fact* and in law to take gas ratably. No objection was voiced that the order compelled a *private* gatherer of his own gas to purchase from others gas he did not want, and the opinion contains no intimation that the 1921 act, or any other enactment then extant, could apply to *private* producers or gatherers of gas.

Oklahoma Natural Gas Co. v. Corporation Commission, 90 Okla. 84, 216 Pac. 917 (1923), involved a domestic corporation which was a *public utility*, operating its own distribution system and also making city-gate sales of gas to other distribution companies for resale to ultimate public consumers. The case was:

> "... an appeal from an order of the Corporation Commission prescribing rates to be charged by the Oklahoma Natural Gas Company for gas furnished by it to various distributing companies and municipalities in the state." (216 Pac. at 917)

The sole issue determined is thus accurately condensed by the court's own opinion:

> "The question presented by this appeal is whether the rates prescribed by the Corporation Commission are reasonable and just. The company contends that such rates, both city gate and distribution, are unreasonable and unjust, and do not and will not render it a reasonable return upon the value of its property used and useful in rendering the service required of it." (216 Pac. at 919)

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28. Appellees' typewritten motion to dismiss, p. 7 (as corrected by typewritten amendment), describes this case as involving "an order identical in principle" to the instant one.

H. F. Wilcox Oil and Gas Company v. State, 162 Okla. 89, 19 P. (2d) 347 (1933),[29] *C. J. Julian Oil & Royalties Co. v. Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930),[30] and *Quinton Relief Oil & Gas Co. v. Corporation Commission*, 101 Okla. 164, 224 Pac. 156 (1924),[31] the other three Oklahoma decisions relied on by appellees as having invested Republic with inceptive comprehension of the applicability to private gathering lines of the 1913 and 1915 statutes, albeit none involved or discussed either of such enactments, are likewise completely tangential to any issue here involved.

At page seven of their typewritten motion to dismiss this appeal, appellees stated:

> "The order of the Corporation Commission of the State of Oklahoma involved herein reflects that it had on numerous occasions made identical applica-

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29. Upon that appeal from an order shutting in a well, counsel for the appellee-Commission confessed there was, "no evidence in this record supporting the order appealed from" (19 P. 2d at 349). Reversal therefore being inevitable, the Oklahoma Supreme Court severely criticized the Commission for having deprived the appellant, "of its legal rights . . . not only in this instance, but in a prior instance wherein the attorneys for the appellees admitted in this court that the orders requiring the shutting in of the wells of this appellant were ineffective and void" (19 P. 2d at 350). The court then delivered a gratuitous lecture, "for the guidance of the corporation commission in future hearings" (19 P. 2d at 349), containing narry one word touching upon any issue entailed by the case at bar. It is this anomolous decision which is incorrectly cited in the instant Commission opinion (R. 412) as 119 P. (2d) 347.

30. This opinion, twenty-five pages of amorphous generalizations, simply upheld a basic proration order, of the type prevailing in petroleum states, which restricted each well to a production in the proportion that its potential bore to the total pool potential. No other problem was even considered.

31. This case merely upheld the state's authority to prohibit wasteful utilization of gas for carbon black manufacture, citing *Walls v. Midland Carbon Co.*, 245 U. S. 300, 65 L. ed. 276 (1920) as determinative of the entire appeal.

tions of the statutes involved prior to the time appellant qualified to do business in the State of Oklahoma."

Per contra, it is patent from even a cursory reading of the instant Commission order that the case at bar was for it one of troublesome first impression. Nor have we yet been favored by appellees with the citation of so many as a single Commission order applying any Oklahoma statute, much less the 1913 or 1915 statutes here involved, to a private gatherer of its own gas from its own wells. Had any such order ever been promulgated it is unthinkable that, as both the Commission and the Oklahoma Supreme Court concede, the statutes would never have become subject to appellate judicial consideration.

In this same connection; we take note of appellees' declaration, at page 7 of their typewritten motion to dismiss, that:

> "... appellant knew of the interpretation placed upon the statutes involved by the Corporation Commission of the State of Oklahoma when it qualified to do business in the State of Oklahoma (R. 270)."

The same affirmation appears in the Commission's instant opinion (R. 416):

> "Not only did Republic Natural Gas Company have knowledge of the laws, rules, and regulations, and decisions of the Supreme Court of Oklahoma concerning ratable taking, but the company was specifically told by the Honorable Wm. J. Armstrong, then Conservation Officer and now a member of the Commission, that if it entered the State of Oklahoma to drill gas wells, it would be required to produce and take gas from its wells ratably with the other wells in the common source of supply."

The only evidence upon which that recital could hope to rest is as follows (R. 208):

> "Q. I will ask you [Alfred Hurlburt, officer of and witness for Republic] if Commissioner Armstrong didn't ask you this further question [at a prior Commission hearing], and if you didn't make this answer:
>
> "'Q. It has always been the understanding between your company and the representatives of the Corporation Commission as you moved into Oklahoma, *that there was a ratable taking law in this State?*
>
> "'A. Yes.'
>
> "A. Yes, sir."

Aside from other obvious discrepancies between that testimony and the Commission's statement in its order, it requires no argument to demonstrate that knowledge of the existence of "a ratable taking law" is nowise tantamount to realization that such laws would one day be construed as applicable to gatherers of their own gas from their own wells. It is interesting, at this point, to observe that nowhere in its opinion does the Oklahoma Supreme Court agree with or rely upon the Commission's gratuitous assumption of Republic's peculiar, Armstrong-derived knowledge.

As a matter of fact, the only pertinent knowledge of Oklahoma statutory law which Republic possessed at the time it qualified to do business in that state was afforded by *Nowata County Gas Co. v. Henry Oil Co.*, 269 Fed. 742 (C. C. A. 8, Okla., 1920), which held Chapter 99 of the Oklahoma Session Laws of 1913 could not constitutionally invest the Oklahoma Corporation Commission with jurisdiction over sales by a private producer of gas from his own wells.

We submit the Commission's instant order, construing and applying the 1913 and 1915 Oklahoma statutes for the first time since their passage, should itself be treated as the legislative enactment of a "statute" long subsequent to Republic's entry into Oklahoma, and that, therefore, Republic may not be held to have "waived" its right to assert the unconstitutionality thereof.

We further submit that, under the authorities hereinbefore cited, even had Republic knowingly and affirmatively agreed to abide enforcement against it of the 1913-1915 statutes in consideration of the privilege of transacting Oklahoma business, nevertheless, since those statutes are repugnant to the Federal Constitution as here applied to Republic, such waiver would itself be void and unenforceable.

And in no event here, where Republic did not expressly consent to be bound by Oklahoma statutes or Commission orders, does the mere fact that Republic qualified to do business in Oklahoma when the controversial enactments were in existence estop Republic from asserting its constitutional rights upon this appeal.

F.

CONCLUSION

Republic is a private corporation. It entered the State of Oklahoma and there purchased mineral interests and gas leases. At its own cost it explored for gas, drilling wells upon acreage it owned or leased. It was a pioneer in the discovery and development of gas in the now famous Hugoton Gas Field (see R. 416, lines

21-25). In addition, at tremendous expense it constructed its own pipe line gathering system so it might gather, carry, and dispose of its own gas from its own wells. It sought and obtained a market for part of its production. At all time it has engaged in the strictly private business of producing its own gas wells, gathering the production therefrom in its own facilities, and carrying such gas to its own market. It has complied with all proration regulations of the Oklahoma Corporation Commission, and has not withdrawn from its wells more gas than permitted by the Commission's orders.

Peerless, on the other hand, has hazarded nothing. It drilled its controversial well at a time when the Hugoton Gas Field was a conclusively proven one, and at a place where commercial production was as certain to follow drilling as the night the day. It did so knowing it had neither a market for its gas nor facilities for carrying its gas to such markets as it might discover. And then, without attempting to obtain a market or construct carrying facilities of its own, it made its parasitic demand that its gas be transported and paid for by Republic.

Note Republic once offered to carry the Peerless gas free of charge and deliver it to whatever market Peerless might obtain (see R. 418, lines 35-36). But Peerless rejected this offer, demanding what it deemed its full pound of statutory flesh — Republic must not only transport, but must also *purchase* the Peerless gas and dispose of it upon Republic's own market which is insufficient even to enable Republic to sell all the gas from its own wells which the Commission has authorized it to produce. Not because the Peerless well is being

drained, not because it is being drained by Republic, nor even because Peerless has no pipe line facilities, but simply because Peerless has been unable or unwilling to find any one desirous of buying its gas, it insists Republic must assume the dual role of common carrier and common purchaser. It would seem the "correlative rights" which Peerless flaunts are themselves somewhat lacking in reciprocity.

We submit that Republic, a private producer, which merely gathers and carries its own gas from its own wells in its own gathering system to its own market, may not constitutionally be compelled to accept and carry to its private market in its private gathering line gas from the Peerless well. *A fortiori* we submit there can be no constitutional basis for requiring Republic to *purchase* gas from Peerless. The judgment of the Oklahoma Supreme Court should be reversed.

Respectfully submitted,

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G.

APPENDIX

Chapter 198, Laws of 1913 (52 Okla. Stats. Ann. §§231-235) enacts as follows:

"§231. *Ownership of gas.*[1] All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state." (Laws 1913, Ch. 198, p. 439, §1, 52 Okla. Stats. Ann. §231, p. 499)

"§232. *Drilling rights — Restrictions on output.* Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than

1. Notwithstanding this statute, however, the "law of capture" still obtains in Oklahoma; oil and gas in place are not subject to absolute ownership until reduced to possession as personal property by drilling and production: *Rich v. Doneghey*, 71 Okla. 204, 177 Pac. 86, 89 (1918); *American Oil & Refining Co. v. Cornish*, 173 Okla. 470, 49 P. (2d) 81, 82 (1935); *Gruger v. Phillips Petroleum Co.*, 192 Okla. 259, 135 P. (2d) 485, 488 (1943); *Replogle v. Indian Territory Illuminating Oil Co.*, 193 Okla. 361, 143 P. (2d) 1002, 1007 (1943); *Ohio Oil Co. v. Sharp*, 135 F. (2d) 303, 307 (C. C. A. 10, 1943).

twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing, the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well." (Laws 1913, Ch. 198, p. 440, §2, 52 Okla. Stats. Ann. §232, p. 499)

"§233. *Sale of gas — Prices and amounts of gas to be taken — Delivery.* Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlaying such gas." (Laws 1913, Ch. 198, p. 440, §3, 52 Okla. Stats. Ann. §233, p. 500)

The next section (Laws 1913, Ch. 198, p. 441, §4, 52 Okla. Stats. Ann. §234, p. 500) provides civil liabilities for violation of the act. The last section (Laws 1913, Ch. 198, p. 441, §5, 52 Okla. Stats. Ann. §235, p. 501) prescribes criminal penalties for such violation.

The production and transportation act of 1913 (Laws 1913, Ch. 99, 52 Okla. Stats. Ann. §§21-35), to which incidental reference is made in the Commission's opinion as "common purchaser statutes" and "common car-

rier statutes" (R. 411), is not stressed in the Commission opinion or relied upon by the Oklahoma Supreme Court as justifying the order here under attack. Therefore, we refrain from quoting its provisions.

Chapter 197, Laws of 1915 (52 Okla. Stats. Ann. §§236-247) contains twelve sections, only two of which were quoted by the Commission (§4, R. 410, 414; §8, R. 415). Inasmuch as the Oklahoma Supreme Court seemingly predicated its judgment entirely upon Chapter 198 of the Laws of 1913, placing no dependence upon Laws 1915, Chapter 197, we shall quote only sections four and eight and merely summarize the other sections of the 1915 act:

Section 1 (Laws 1915, Ch. 197, §1, 52 Okla. Stats. Ann. §236, p. 501) prohibits "waste" of natural gas.

Section two (Laws 1915, Ch. 197, §2, 52 Okla. Stats. Ann. §237, p. 502) defines "waste", and section three (Laws 1915, Ch. 197, §3, 52 Okla. Stats. Ann. §238, p. 503) provides gas encountered in wells shall be confined unless it can be "produced and utilized without waste".

> "§239. *Common source of supply — Excess gas supply — Apportionment and regulation to prevent waste.* Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage

drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." (Laws 1915, Ch. 197, §4, 52 Okla. Stats. Ann. §239, p. 503)

Section five requires ratable and nondiscriminatory "taking" by every person, firm or corporation engaged in the business "of purchasing and selling natural gas" (Laws 1915, Ch. 197, §5, 52 Okla. Stats. Ann. §240, p. 505).

Section six is a procedural one (Laws 1915, Ch. 197, §6, 52 Okla. Stats. Ann. §241, p. 506); section seven provides for appeals to the Supreme Court from commission orders (Laws 1915, Ch. 197, §7, 52 Okla. Stats. Ann. §242, p. 506).

"§243. *Corporation Commission — Authority to make rules and regulations.* The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents,

with the consent of the Governor, as may be necessary to enforce this act." (Laws 1915, Ch. 197, §8, 52 Okla. Stats. Ann. §243, p. 507)

Section nine (Laws 1915, Ch. 197, §9, 52 Okla. Stats. Ann. §244, p. 508) requires the filing with the Corporation Commission of an acceptance of the act by pipe line companies. Section ten (Laws 1915, Ch. 197, §10, 52 Okla. Stats. Ann. §245, p. 508) preserves the former duties of the Chief Mine Inspector. Section eleven (Laws 1915, Ch. 197, §11, 52 Okla. Stats. Ann. §246, p. 508) is a "partial invalidity shall not affect validity of the remainder" provision. And section twelve (Laws 1915, Ch. 197, §12, 52 Okla. Stats. Ann. §247, p. 508) enacts criminal penalties for violation of the act.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

REPUBLIC NATURAL GAS COMPANY,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL & GAS COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

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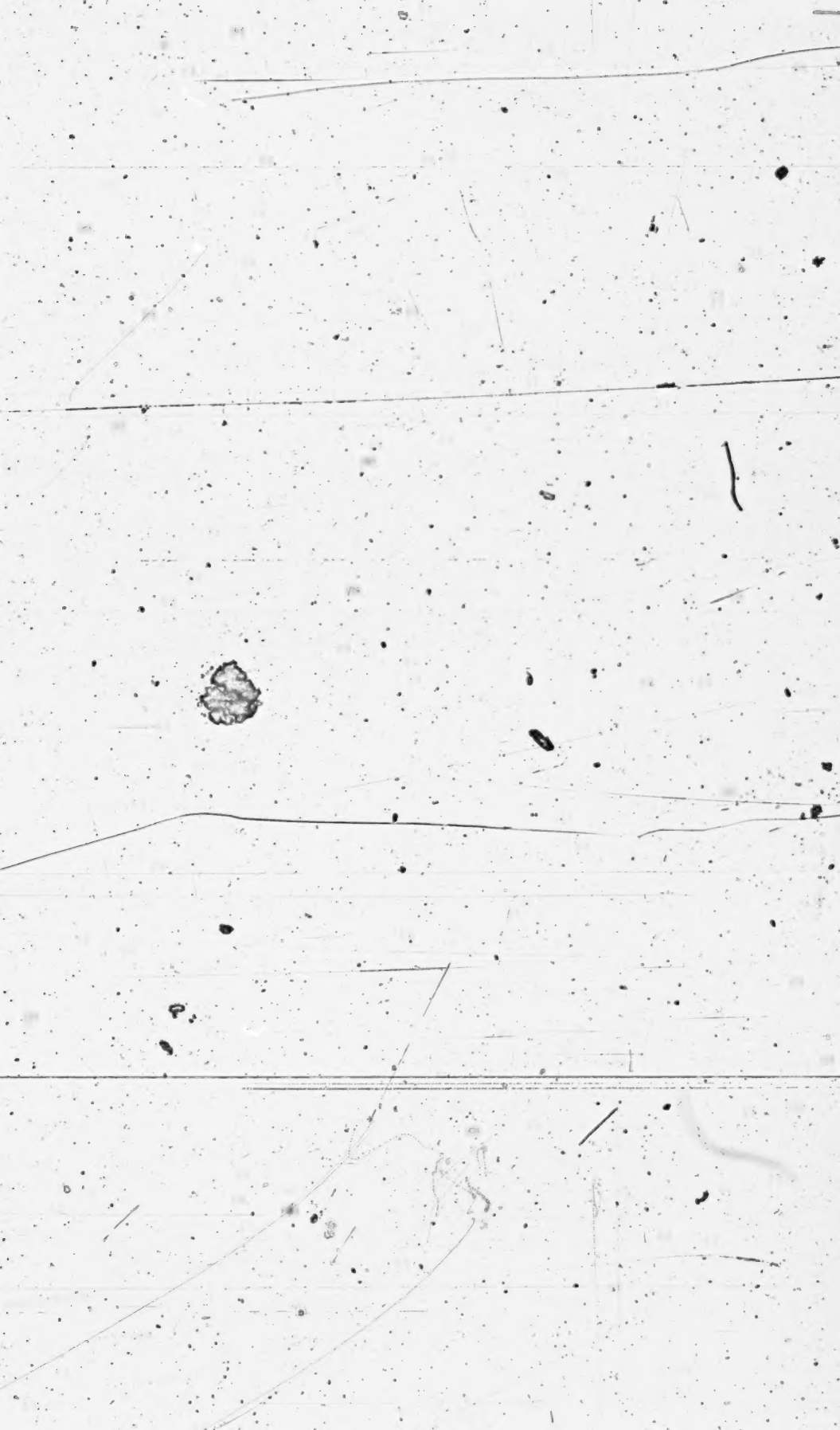

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

No. 32123

REPUBLIC NATURAL GAS COMPANY, A CORPORATION,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL & GAS COMPANY, A CORPORATION,
Appellees

RESPONSE OF APPELLEES TO JURISDICTIONAL STATEMENT OF APPELLANT AND MOTION TO DISMISS OF APPELLEES.

Pursuant to the provisions of the applicable rules of the Supreme Court of the United States, the State of Oklahoma, the Corporation Commission of the State of Oklahoma and Peerless Oil & Gas Company, a corporation, appellees herein, file this, Appellees' Response to the Jurisdictional Statement of said Appellant and Appellees' Mo-

tion to Dismiss the appeal of the appellant, Republic Natural Gas Company, a corporation, for the following reasons:

I

There has been no final judgment in the highest court of the State of Oklahoma within the meaning of the applicable statute.

Section 344 of Title 82, U. S. Code upon which appellant attempts to predicate this appeal, provides in part as follows:

> "(a) A final judgment of decree in any suit in the highest court of the state * * *."

The attempted appeal, involved herein, arises out of an order of the Corporation Commission of the State of Oklahoma, which order provides in part as follows:

ORDER

> "IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:
>
> "1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Crump No. 1, well, located in the Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent

to do so, respondent shall be no longer permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Corporation Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

The opinion of the Supreme Court of the State of Oklahoma involved herein is in part as follows:

"It required Republic and Peerless to determine and agree upon the terms and conditions of the taking of the gas of Peerless by Republic, and provided that in the event they could not reach an agreement they could make further application to the Commission for an order fixing such terms and conditions, and the Commission retained jurisdiction for that purpose."

"Neither did the order require Republic to become a common purchaser, since it gave Republic a choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or to shut in its own production from the same common source of supply. It was free to choose either of those three methods of correcting the inequality in taking and the consequent infringement of the correlative rights of Peerless."

The order of the Corporation Commission, as aforesaid, was a final and appealable order under the practice of the Corporation Commission of the State of Oklahoma and of the Supreme Court of said State. Such order was not, however, a final order within the meaning of the federal statute aforesaid. The Supreme Court of the United States has

many times held that a "final judgment" within the meaning of said statute is a judgment which fully adjudicates the rights of the parties and completely disposes of the subject matter of the litigation. The order of the Corporation Commission aforesaid clearly does not fully adjudicate the rights of the parties and completely dispose of the subject matter of the litigation. Such order therefore is not a final judgment within the meaning of the federal applicable statute, upon which appellant attempts to predicate its appeal herein. The decision of the Supreme Court of the State of Oklahoma, affirming the order of the Corporation Commission, involved herein, in effect remanded said matter to the Corporation Commission for further proceedings in the event the Republic Natural Gas Company, appellant herein, and Peerless Oil & Gas Company, one of the appellees herein, should fail to agree upon the terms and conditions of the taking. In the event said parties should thereafter be unable to agree upon the terms and conditions of the taking, then and in that event, the Corporation Commission of the State of Oklahoma would proceed to fully and finally adjudicate the rights of the parties and fully dispose of the subject matter of the litigation by fixing the terms and conditions of the taking. The order of the Corporation Commission and the decision of the Supreme Court of the State of Oklahoma do not, therefore, fully adjudicate the rights of the parties and completely dispose of the subject matter of the litigation. There has been, therefore, no final judgment within the meaning of the applicable federal statutes. *Heike* v. *United States*, 217 U. S. 423; *Louisiana Navigation Company, Ltd. v. Oyster Commission of Louisiana*, 226 U. S. 99; *Grays Harbor Logging Company, et al.* v. *Coats-Fordney Logging Company*, 243 U. S. 251; *Bruce, Administrator of Tobin, et al.* v. *Tobin*, 245 U. S. 18; *Georgia Railway & Power Company*,

et al. v. *Town of Decatur*, 262 U. S. 432; *Arnold* v. *Gurmarin & Co.*, 263 U. S. 427; *LaClede Gas Light Company* v. *Public Service Commission, et al.*, 304 U. S. 398; *Department of Banking of Nebraska, Receiver* v. *Pink, Superintendent of Insurance of the State of New York*, 317 U. S. 264; *Catlin, et al., Trustees* v. *U. S.*, 324 U. S. 229.

Until an order shall have been entered by the Corporation Commission of the State of Oklahoma fully adjudicating all the rights of the parties and fully disposing of the subject matter of the subject litigation, *i. e.*—fixing the terms and conditions of the taking of natural gas, the Supreme Court of the United States is in no position to say that such order is violative of the rights of the appellant. (See *Hunter Company, Inc.* v. *McHugh, Commissioner of Conservation, et al.*, 320 U. S. 222.)

It therefore follows that the Supreme Court of the United States has no jurisdiction of the within matter at this time for the reason that there has been no final judgment within the meaning of Section 344 (a) of Title 28 U. S. Code.

II

The Supreme Court of the State of Oklahoma, in its decision involved herein, did not pass upon the validity of the state statutes involved with reference to questions involving the Constitution of the United States.

In its opinion herein, the Supreme Court of the State of Oklahoma said:

> "In the instant case the record discloses that both the 1913 and 1915 acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state, and engaged in such business and entered into its various contracts. Having entered into this state and obtained the privilege of conducting its business

operations therein when said laws were in full force and effect, it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, 42 S. C. Reporter, 440."

In that case, the Supreme Court, passing upon a similar contention held:

"A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case as dealt with by this court in pipeline cases, 234 U. S. 548, 561, in a single sentence, saying: 'So far as the statute contemplates future pipelines and prescribes conditions upon which they may be established there can be no doubt that it is valid.'

"There is nothing in the nature of such a constitutional right as is here asserted to prevent its being waived or the right to claim it barred, as other rights may be, by deliberate election or by conduct inconsistent with the assertion of such a right. Pierce *v.* Somerset Railway, 171 U. S. 651, 648; Wall *v.* Parrot Silver & Copper Co., 244 U. S. 407, 411."

It is thus seen that the Supreme Court of the State of Oklahoma did not pass upon the constitutionality of the State statutes involved insofar as the Federal Constitution is concerned, its decision being limited to the rule that the Republic Natural Gas Company has waived its right, by deliberate election or by conduct inconsistent with the assertion of such a right, to attack the validity of the state statutes involved as being in violation of the Federal Constitution.

The opinion of the Supreme Court of the State of Oklahoma did not decide in favor of the validity of the State statutes involved, insofar as the Federal Constitution is

concerned, within the meaning of the applicable statute, to-wit: Section 344 (a) of Title 48 U. S. Code.

In any event the question of whether or not the appellant, Republic Natural Gas Company, a corporation, has waived its right to assert that the state statutes involved are in violation of the Constitution of the United States, or is estopped to deny the validity of said statutes on such grounds is not a federal question, but is a state question. *Eustis* v. *Bolles*, 150 U. S. 361; *Gillis* v. *Stinchfield*, 159 U. S. 658; *Pierce* v. *Somerset Railway*, 171 U. S. 641; *Speed* v. *McCarthy*, 181 U. S. 269; *Beals* v. *Cone*, 188 U. S. 184; *Shepard* v. *Barron*, 194 U. S. 553; *Leonard* v. *Vicksburg, Shreveport and Pacific Railroad Company*, 198 U. S. 416; *Richardson Machinery Company* v. *Scott*, 276 U. S. 128.

It is thus seen that the Supreme Court of the State of Oklahoma did not pass upon the validity of the statutes of the State of Oklahoma involved, with reference to the Constitution of the United States, but held that the appellant, Republic Natural Gas Company, a corporation, by its acceptance of the laws of the State of Oklahoma and its course of conduct, had waived its right to contend that said statutes were in violation of the Constitution of the United States and that the question there involved of such waiver, or estoppel was not a federal question but a state question for which reason the Supreme Court of the United States does not have jurisdiction of this appeal.

III

The matters involved in this attempted appeal have been foreclosed by previous decisions of this Court.

It is well established rule of this court that matters which have been foreclosed by previous decisions of this court so

as to preclude further argument will not be considered. *City of Boston* v. *Jackson, Treasurer and Receiver General of the Commonwealth of Massachusetts*, 260 U. S. 309. Appellees respectfully submit that the questions involved in this attempted appeal have been so foreclosed by previous decisions as to be unsubstantial and to not need further argument;

(a) The proposition that so far as the statutes involved contemplate future pipe lines and prescribe conditions upon which they may be established are without doubt valid has been established clearly in *Pipe Line Cases*, 234 U. S. 541, 561, and *Pierce Oil Corporation* v. *Phoenix Refining Company*, 259 U. S. 125. The last cited case involved an appeal from a decision of the Supreme Court of the State of Oklahoma in the case of *Pierce Oil Corporation* v. *Phoenix Refining Company, et al.*, 190 Pac. 857. The opinion of the Supreme Court of Oklahoma in that case was concurred in by Justice Rainey, now one of the attorneys for appellant.

(b) The proposition that the appellant, by qualifying to do business in the State of Oklahoma, by accepting the laws of the said state at the time of its qualification to do business by accepting the privilege conferred by the statutes involved and by its deliberate election and conduct, has waived its right to attack and may not now successfully attack the statutes involved, has been fully and completely established in *Pipe Line Cases*, 234 U. S. 541, and *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125. It is well to note that the last cited case had involved the construction of the Oklahoma Oil Pipe Line Statute, which provides that all who transport oil within the State of Oklahoma for compensation, hire or otherwise are common carriers.

In its jurisdictional statement, the appellant contends that this rule does not apply for the reason that the statutes involved have for the first time been applied in the instant case, and that no such interpretation had been placed upon the statute prior to the time that appellant qualified to do business in the state. An order identical in principle was involved in the case of *Oklahoma Natural Gas Co.* v. *Corporation Commission*, 216 Pac. 917, which was decided by the Supreme Court of Oklahoma on June 19, 1923, long prior to the time that appellant qualified to do business in the State of Oklahoma. The order of the Corporation Commission of the State of Oklahoma involved herein reflects that it had on numerous occasions made identical applications of the statutes involved prior to the time that appellant qualified to do business in the State of Oklahoma. The record reflects that appellant knew of the interpretation placed upon the statutes involved by the Corporation Commission of the State of Oklahoma when it qualified to do business in the State of Oklahoma (R. 270).

(c) That a state may provide conditions upon which a foreign corporation may be admitted to do business in the state and may require that a foreign corporation accept the provisions of such statutes before being admitted to do business in the state, and that such provisions when so accepted are not violative of the 14th Amendment has been fully and completely decided in *Washington, ex rel. Bond & Goodwin & Tucker, Inc.*, v. *Superior Court of Washington for Spokane County, et al.*, 289 U. S. 361.

(d) That the duly constituted authorities of a state may shut in an oil or gas well when such action is necessary to prevent waste or protect correlative rights has been established by this court in the case of *Ohio Oil Company* v. *Indiana*, 177 U. S. 190.

WHEREFORE, appellees pray that the Supreme Court of the United States refuse to assume jurisdiction of the attempted appeal herein and that the same be dismissed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY

No. 134

In the Supreme Court of the United States

OCTOBER TERM, 1947

REPUBLIC NATURAL GAS COMPANY,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation,
Appellees.

BRIEF OF APPELLEES

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Appeal from the Supreme Court of the State of Oklahoma

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In the
Supreme Court of the United States

OCTOBER TERM, 1947

No. 134

REPUBLIC NATURAL GAS COMPANY,
Appellant,
vs.
STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation,
Appellees.

BRIEF OF APPELLEES

PRELIMINARY STATEMENT

Appellant will be referred to herein as Republic; the appellee, Corporation Commission of the State of Oklahoma, will be referred to herein as Commission, and the appellee, Peerless Oil and Gas Company, a corporation, will be referre dto herein as Peerless.

This proceeding was originally commenced before the Corporation Commission of the State of Oklahoma by application of Peerless Oil and Gas Company seeking a connection for a natural gas well drilled and owned by it pursuant to valid and subsisting oil and gas leases (R. 6). The

Commission, pursuant to proper notice and after a full and complete hearing of the issues involved entered its report, findings and order (R. 409). From the order of the Commission, Republic appealed to the Supreme Court of the State of Oklahoma and the order of the Commission was affirmed by that court (R. 453-464 inc.).

From the judgment of the Supreme Court of the State of Oklahoma, Republic has taken the appeal involved herein by timely filing of its jurisdictional statement and transcript of record. Republic's assignments of error appear at page 474, and statement of points to be relied upon at page 479 of the record.

This Court on October 13, 1947, noted probable jurisdiction.

JURISDICTION

Peerless has filed its objection to jurisdiction and motion to dismiss on the grounds, (1) the judgment involved is not final within the meaning of the applicable statute, (2) there is no substantial Federal question involved, and (3) the matters involved have been foreclosed by previous decisions of this Court. In addition to authorities cited therein by Peerless the attention of the Court is called to *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U. S. 376; *Parker, Director of Agriculture* v. *Brown*, 317 U. S. 341; *Davies Warehouse Co.* v. *Bowles, Price Administrator*, 321 U. S. 144, in support of the latter two contentions.

STATUTES INVOLVED

The statutes involved have been incorporated in the appendices as a part of this brief.

Appendix B contains various provisions of the Oklahoma Revised Laws, 1910, relating to pipe lines and operators of pipe lines.

Chap. 99 Session Laws, 1913 (Appendix C), regulates corporations, associations and persons, engaged in the State of Oklahoma, in the business of carrying natural gas through pipe lines, the operators of gas wells, and the purchase of natural gas by pipe lines.

The statute provides, among other things, that every corporation, joint stock company, limited copartnership, partnership or other person, now, or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, within the limits of the State of Oklahoma, shall perform all the duties of a common purchaser without discrimination, and are prohibited from owning or operating any gas well or wells, gas leases or gas holdings or interest in this State, unless the same shall become common purchasers and accept the provisions of said Act.

Chap. 198, Session Laws 1913 (Appendix D), upon which the Supreme Court of the State of Oklahoma based its affirmance of the order of the Corporation Commission, defines ownership of natural gas, provides for ratable taking of same, and makes it larceny to take natural gas except as provided for therein.

Section 1 of the Act provides that all natural gas under the surface of any land in Oklahoma is the property of the owners or gas lessees of the surface under which the gas is located in its original state.

Section 2 of the Act provides that any owners or oil and gas lessees of the surface having the right to drill for gas shall have the right to sink a well to the natural gas underneath, and take gas therefrom until the gas under such surface is exhausted. The drilling of a well by any owner or lessee reduces such gas to possession. In case other parties having the right to drill, sink other wells, then the

amount of gas each owner may take shall be proportionate to the natural flow of his well or wells.

Section 3 provides that any person, firm or corporation taking gas from a gas field, except for purpose of the development of gas or oil field, operating oil wells and for his own domestic use, shall take ratably from each owner of the gas in the proportion his interest bears to the whole, upon such terms as may be agreed upon between said owners and the parties taking such, or in case they cannot agree, at such price and upon such terms as may be fixed by the Corporation Commission, provided that each owner shall be required to deliver his gas to a common point of delivery on the surface overlying such gas.

Section 4 provides for damages in case of taking in violation of said statute.

Section 5 provides that the taking of gas, except as therein provided, shall consttute larceny and provides penalties therefor.

Chap. 197, Session Laws, 1915 (Appendix E) is an Act to conserve natural gas, to prevent waste thereof, provide equitable taking and purchase of same, conferring authority on the Corporation Commission, prescribing penalties for violation of the Act. Said Act prohibits production of natural gas in such manner and under such conditions as to constitute waste, provides that when the production in any gas field is in excess of the market demand then any producer may take therefrom his proportionate share, only, of the natural gas therefrom; said statute authorizes and directs the Commission to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the in-

terests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Said Act provides that every person, firm or corporation engaged in the business of buying and selling natural gas shall be a common purchaser and shall purchase all natural gas which may be offered for sale which may be reasonably reached by its trunk line without discrimination in favor of one producer as against another.

Chap. 93, Session Laws, 1913 (Appendix F) provides that the term "public utility" shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers that operate or manage any plant or equipment or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipe line.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

THE COMMISSION'S FINDINGS

The Commission made findings in substance as follows:

Peerless is the owner of valid and subsisting oil and gas leases located in the Hugoton, Oklahoma Gas Field, including oil and gas leases covering Section 14, Township 6 North, Range 15 E.C.M. in Texas County, Oklahoma, and, as provided by law and regulations of the Corporation Commission, gave notice of intention to drill and drilled and completed a well for the production of natural gas in said section, said well being completed, equipped and ready for production on April 28, 1944 (R. 420).

Republic is the owner of various gas wells, surrounding the section in which the Peerless Well has been drilled, from which Republic has been for a considerable period of time, prior to the completion of said Peerless well, producing natural gas, thereby draining natural gas from underneath said Section 14 in which the well of Peerless has been drilled, and that such drainage has been continuous, from the date of the completion of each of the Republic wells, both before and after the completion of said Peerless well (R. 420-421).

The wells of Republic and the well of Peerless are drilled into the same common source of supply and reservoir of natural gas.

The production of natural gas in the field is in excess of the market demand.

Republic was at the time of the hearing and had theretofore been engaged in transporting natural gas for compensation, hire and otherwise.

Republic was at the time of the hearing and had been at all times involved, engaged in the business of buying, and selling of natural gas in the Hugoton, Oklahoma Gas Field, and is a common purchaser within the meaning of the statutes of the State of Oklahoma defining common purchaser (R. 422).

Republic uses the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

Republic at all times involved has been engaged in the taking of natural gas from the gas field involved, and in transporting the same and delivering the same for sale within and without the State of Oklahoma.

One of the pipe lines of Republic crosses Section 14 in which the well of Peerless has been drilled (R. 422-423).

Republic qualified to do business in the State of Oklahoma on the 5th day of October, 1938, and accepted and agreed to comply with the laws of the State of Oklahoma governing its operations, with full knowledge of the laws of the State of Oklahoma with reference to ratable taking of natural gas (R. 423, 424).

The operations of Republic constitute it a transporter of natural gas.

Its operations constitute it a common carrier of natural gas.

Its operations constitute it a common purchaser of natural gas.

Even though Republic is not a common carrier or a common purchaser Republic has been engaged in taking natural gas from the natural gas field involved, for purposes other than the development of gas or oil fields, or operating oil wells, or for purpose of its own domestic use, and in doing so has been taking more than its proportionate share of gas from the natural gas field, and draining natural gas from underneath the Peerless well and is thereby preventing Peerless from taking its proportionate share of the natural gas from said natural gas field (R. 425, 426).

Peerless has made a proper tender to Republic of the natural gas producible from its said well but Republic has refused to take gas ratably from said well.

Republic should be required to take natural gas ratably from the Peerless well for the following reasons, any one of which is sufficient:

(a) Republic is a common purchaser of natural gas;

(b) Republic is a common carrier of natural gas;

(c) Republic is a transporter of natural gas;

(d) Republic is taking and will continue to take more than its proportionate part of the natural gas in said field unless required to take ratably from said well of Peerless;

(e) Republic is draining natural gas from underneath said Section 14 in which said Peerless well has been drilled; and will continue to drain gas from underneath said Section 14 until all the gas thereunder has been drained and Peerless thereby prevented from taking its proportionate share of natural gas in the field unless Republic is required to take ratably from said well, and Republic should be required, in order to prevent waste, protect correlative rights, and prevent unreasonable drainage from the reserves of others, to take ratably from said well. That the draining of natural gas from underneath Section 14 by Republic is the taking of property without compensation, without its consent, and in direct violation of Sections 23 and 24, Article 2 of the Constitution of Oklahoma and the Fifth Amendment to the Constitution of the United States, and without due process of law, in violation of the Constitution of Oklahoma and of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. (R. 426).

The order of the Commission based on the preceding findings is short and is set out in full:

> "It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:
>
> "1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Crump No. 1 well, located in the

Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C.M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose.

"Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 10th day of January, 1945." (R. 427-428)

THE EVIDENCE

The natural gas well of Peerless and the natural gas wells of Republic are located in the Hugoton Oklahoma Gas Field (R. 83). This field is one of the largest gas fields in the State of Oklahoma (R. 55), having total reserves of approximately nine trillion cubic feet of natural gas; said

field extends from the Kansas line on the North, through Texas County, Oklahoma, to the Texas line on the South, and approximately 40 miles east and west; said field extends north into the State of Kansas and at least a short distance south into the State of Texas (R. 56, 57).

Republic has 92 producing gas wells in said field, 38 are in Oklahoma, which said wells are drilled into the same common source of supply as that into which the Peerless well involved herein has been drilled (R. 164, 165, 205, 206).

Republic has sold a part of the natural gas produced by it to Southwestern Public Service Company, formerly Cimarron Utilities Company, for distribution and sale to the public in sixteen towns in Oklahoma (Bobo, R. 69, 70, 71).

Republis sells a part of the natural gas which it produces to Northern Natural Gas Company for distribution and sale to the public (Ex. 32, 15, 49, R. 274, 305, 294; Hurlburt, R. 168, 169, 170).

Republic also sells and delivers part of the natural gas produced by it to Cities Service Gas Company in the State of Oklahoma under the contract of dedication for period of twenty years for sale and distribution by Cities Service Gas Company to the public (Hurlburt, R. 204; Ex. 50, 51 and 49; R. 297, 226, 294).

Republic has transported natural gas for others as follows:

(a) It has transported natural gas for Cities Service Gas Company (Hurlburt, 183, 184, 185, 186; Ex. 16, R. 287-8, and Ex. 43, R. 287-8).

(b) In consideration of permission granted it by the P.A.W. to use critical materials in the drilling of eight

wells, Republic connected with wells belonging to Pioneer Petroleum Company and Benedum Trees Oil Company, and transported natural gas from said wells for resale. Republic connected to said wells at its own cost and transported the natural gas to market without any charge except the right to use critical materials (Hurlburt, R. 186-7, 188; Ex. 25 to 42 inc., R. 267-284 inc.; Ex. 45 and 46, R. 289, 290).

Republic at the time of the hearing was selling natural gas which it had transported, to Northern Natural at the rate of six cents per thousand cubic feet and paid its royalty owners five cents per thousand cubic feet. This difference in the amount received by Republic and that paid to the royalty owners was a charge or consideration for transporting of the natural gas through the pipe lines of Republic to the purchaser, and Republic profited by said transaction to the extent of one cent per thousand cubic feet of natural gas so transported (Hurlburt, R. 149, 150, 151, 152, 157, 158; R. 460).

Republic sells natural gas to domestic consumers on the right of ways (Hurlburt, R. 172).

Republic has laid some of its pipe lines on public highways and has made application to and obtained permission from the Board of County Commissioners of Texas County, Oklahoma, to lay a pipe line on the highways (Hurlburt, R. 199, 200; Ex. 19, 20, R. 200, 202).

The Gas Purchase Contract with Northern Natural was first entered into with the predecessor of Republic on May 27, 1930; Amendatory and Supplemental Agreements were dated July 1, 1932 (R. 326) and April 5, 1937 (R. 352, 367; Ex. 15, R. 305).

Republic was incorporated on November 24, 1934, and its Articles were thereafter amended on the following dates:

June 25, 1935, October 29, 1937, March 21, 1939, October 22, 1943 (Ex. 23, R. 373).

Republic qualified to do business in the State of Oklahoma on the 5th of October, 1938 (R. 424).

Republic entered into a contract for sale of excess gas to Northern Natural Gas Company, November 25, 1946 (Ex. 49, R. 294).

Republic entered into a gas purchase contract with Cities Service Gas Company on July 19, 1943 (Ex. 50, R. 297). A memorandum agreement with Cities Service Gas Company was entered into July 22, 1943 (Ex. 51, R. 226) and Supplementary Agreement dated April 26, 1944 (Ex. 44, R. 288).

Republic has a pipe line, a part of which is located in the Hugoton Oklahoma Gas Field in Texas County and which crosses Section 14 in which the well of Peerless involved herein has been drilled, which said pipe line is used for transporting natural gas for domestic consumption along the right of way, to Northern Natural for distribution to the public for delivery and sale, to Cities Service Gas Company in Oklahoma for distribution to its consumers in Oklahoma and other states and to Southwestern Public Service Company, formerly Cimarron Utilities Company, for distribution to its customers in sixteen towns or cities in the State of Oklahoma (Ellison, R. 83-84-5; Hurlburt, R. 165-172 inc.; Bobo, 69-71 inc.; Ex. 9, 14, 15, 50, 51 and 49, R. 296A, 304A, 305, 297, 226, 294).

There was an understanding, between Republic and the representatives of the Commission before Republic entered the State of Oklahoma, that there was at ratable taking law in the State of Oklahoma (R. 208).

H. L. WILBURN, a witness on behalf of applicant, testified that he had charge of the drilling in of Peerless Crump

#1 Well; that the virgin pressure of the field was 435 to 438 pounds; that said well was completed and ready for production on April 28, 1944; that the normal, stabilized gas pressure of said well was 399.4 pounds (R. 72 to 78 inc.).

KENNETH ELLISON, a witness on behalf of applicant, testified as to his education and experience; he identified as Exhibit 9, a map reflecting fifteen sections of land in Texas County, which includes Section 14 in which the Peerless Well, Crump #1, had been drilled, and other sections in which wells belonging to Republic had been drilled. The map reflects that Republic's pipe line, which was originally an 8-inch pipe and which recently had been changed to a 12-inch pipe, crosses said Section 14. The map is comprised of fifteen sections of land in which area there has been drilled and completed nine producing gas wells; eight of the wells being owned and operated by Republic, and one of the wells being owned by Peerless (R. 83-84 inc.).

He further testified that the virgin pressure of the field was 440 pounds; that the field would produce within a pressure range of 440 to 40 pounds; that reduction of gas pressure shown on the map with reference to various Republic wells indicates that gas has been withdrawn and that the volume left in the reservoir has been decreased (R. 85, 86).

The decline in pressure indicates that the common reservoir is being depleted of its gas; that the reduction in pressure of Republic's wells shown on the map amounts to 40 pounds, or 10 per cent of the original virgin pressure; that the virgin pressure of the structure underlying said Section 14 in which Peerless Crump #1 Well has been drilled, was 440 pounds, and that the pressure of gas producing formations underlying Section 14 has been reduced by operation of the Republic wells, which shows that gas

has been withdrawn from underneath said Section 14 (R. 86, 87, 88, 94).

The Republic wells shown on his map (Ex. 9, R. 296A), have since their completion been draining natural gas from underneath Section 14. The wells closest to the Peerless well being the ones which profited most by withdrawals of natural gas and are the wells responsible for reduction of pressure of approximately 40 pounds in the Peerless well. The eight Republic wells offsetting and near-by the Peerless well have been draining gas from underneath Section 14, in which the Peerless well has been drilled, to the extent that they have reduced the pressure 40 pounds (R. 92). From a study of the available information and using initial rock pressure of 440 pounds and abandonment pressure of 40 pounds, the ultimate recovery of gas underneath Section 14 from beginning to abandonment conditions would be eight billion, two hundred fifty million cubic feet of gas (R. 93). To the date of trial there had been drained, from underneath Section 14, eight hundred twenty-five million cubic feet of gas, none of which had been produced through the Peerless well, but had been produced by other wells drilled into the same common source of supply. The major portion of the gas from underneath said Section 14 has been produced by the near-by Republic wells (R. 93-4-5).

The withdrawals of natural gas from underneath said Section 14 represents 10 per cent of the total recoverable gas (R. 95). The value of the gas so withdrawn under current prices is approximately $49,500.00 (R. 96).

Assuming that the Peerless well is unconnected, the drainage will continue in the future as in the past. The only way to stop drainage would be to shut in all of the wells or to connect the Peerless well (R. 49-50). Eventually the rock pressure in the formation into which the Peerless well has been drilled will be reduced to approximately 40 pounds,

the gas underlying Section 14 will have gone out to other wells and Peerless will have received no benefits from the gas underlying said Section 14 (R. 96, 97).

The Republic wells involved herein and the Peerless well are drilled into and completed in the same common source of supply of natural gas (R. 97, 98).

THOMAS D. BAILEY, being sworn as a witness, testified on behalf of applicant as follows: He is employed by the Corporation Commission as Petroleum Engineer in the Oil and Gas Conservation Department; as to his education and qualifications; and that the virgin pressure of the Hugoton Field was 440 pounds (R. 50, 51).

There was originally approximately eight billion, seven hundred twenty millions cubic feet of gas, or thirteen million six hundred thirty thousand cubic feet of gas per acre, underlying Section 14 into which the well of Peerless has been drilled.

There has been drained to date from underneath said section one billion seven million cubic feet of gas, the drainage to date figured at 5 cents per thousand cubic feet, would be $53,500.00. The average annual pressure drop on the wells in the area is approximately 5½ pounds per well. Assuming the same reduction in Section 14 during the period from June 1 (the approximate date of the completion of the Peerless well) to October 1, 1944, the pressure drop was 1.8 pounds per square inch, or .598 pounds of the gas in place, the value of which would be approximately $2,390.00, or on a daily basis of $19.60 per day. If such drainage were to continue and the well of Peerless remain unconnected, all recoverable gas would be drained from underneath Section 14 and Peerless would have obtained no advantage therefrom. The Republic wells have been draining natural gas from underneath Section 14 since the date of the comple-

tion of the Peerless well therein and will continue in the future (R. 118, 119, 120, 122).

ELMER CAPSHAW being sworn as a witness testified for both Peerless and Republic, as follows: The witness testified as to his education, qualifications and experience. The virgin pressure of the field was 441 pounds (R. 138).

Gas has been drained from underneath said Section 14 since the first well drilled by Republic has been completed, and the production of the wells belonging to Republic has caused drainage from underneath said Section 14; such drainage will continue in the future if the Republic wells continue to produce as in the past, and if the Peerless well is not connected all natural gas will be withdrawn from underneath said Section 14. The Republic wells are the immediate cause of the difficulty (R. 139, 140).

The Corporation Commission of the State of Oklahoma has made various basic proration and ratable taking orders covering the entire field. The first of which was Order No. 16377 in Cause CD-817. (R. 55). Republic was a party to the proceedings in which said order was entered and Hurlburt, Vice-President, testified in said hearing (R. 148).

Said order recognized and applied the ratable taking laws of 1913, as well as the laws of 1915. The order is, in part, as follows:

> "14. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas, prohibiting the waste thereof, and providing that the Corporation Commission shall give due regard to the acreage drained by each well in prorating gas production so as to prevent any securing of an unfair proportion of the gas from the formation, and authorizing and directing the Corporation Commis-

sion to promulgate rules and regulations for the determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom, and to give to each owner or lessee an opportunity to produce all of the natural gas located in its original state under the property owned by him, and to enforce the laws; * * *"

Said order also contains the following findings:

"9. That pressure differentials exist to some extent between the wells and leases in said field, which shows that there is some migration of gas, and that unless action is taken by this Commission these differentials will increase and considerable inequities will be caused by drainage, and waste may result. It is a matter of common knowledge that gas in a formation migrates toward the wells that are on production and that drainage thus caused, which is not equalized by counter-drainage from different properties, results in disproportionate production by the wells on the respective properties.

"17. That in order to carry out the laws of the State of Oklahoma and to perform the duties and obligations placed upon the Corporation Commission, it is necessary to amend the general rules and regulations insofar as they affect the Hugoton Field and to adopt and promulgate additional rules and regulations for the production of gas from said field in order to prevent waste, insure ratable taking, protect the interest of the public and all parties interested therein, to prevent any lessee from securing any unfair proportion of the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

"18. That in order to accomplish as nearly as possible the object set out in the preceding para-

graph, it is necessary to adopt a formula that will enable each well to currently produce its ratable share of the gas and to ultimately produce the approximate amount originally underlying said lease."

Republic was a party to said order, no appeal was taken therefrom and the same became final.

The Commission also entered Order No 17359 in Cause CD-914 (R. 448). Republic appeared in said proceedings. No appeal was taken therefrom and said order became final. Said order contains the following provision:

"3. In the manufacture of said carbon black applicant shall be required to purchase all the natural gas produced and offered for sale in the vicinity of said plant, or which may be reasonably reached by pipe lines, or other systems in the vicinity of said plant, without discrimination in favor of one producer or person as against another; and if applicant is unable to purchase all of said gas so produced and offered for sale, it shall purchase said natural gas from each person or producer ratably on such ratable basis as shall be established by this Commission or by the laws of the State of Oklahoma."

Pursuant to said order Republic made a tender to Cabot Carbon Company of natural gas to be produced by Republic (R. 447).

After the hearing and before the order, involved herein, was entered and filed herein the Commission issued its Order No. 17410 in Cause CD-861, of which order the Supreme Court of the State of Oklahoma took judicial notice, said order being a part of the record in said court but for some reason is not a part of the record herein. Said order contains the following findings:

"9. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some

wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is of common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which is not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

"11. That the full production of gas from wells in said field is greatly in excess of the market demand and of the transportation and marketing facilities.

"12. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest there in and wells located thereon; that in the years 1933 and 1935 the legislature enacted additional statutes which pertain principally to oil production, but in general providing that pro-

duction of oil and gas in such manner as to constitute waste is prohibted, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

* * *

"16. That it appears that one well in said field will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the governmental survey, and there is no such section that has more than one well, but the acreage communitized for the drilling of such wells has not been in all instances all within one section, nor are the wells heretofore drilled all located in the approximate center of a section; that since the promulgation of Order No. 16377 all wells have been drilled on communitized leases entirely within one section according to the governmental survey, with the well in the approximate center thereof; that except as otherwise specifically provided all units should contain not to exceed 640 acres all within one section as determined by the United States Governmental Survey and each well should be located as nearly as practicable in the center of a unit, unless otherwise specifically ordered by the Commission; that the acreage factor for the purposes of the allocation formula should be not to exceed 640 acres all within one governmental section with the well in the approximate center thereof unless otherwise specifically ordered by the Commission.

* * *

"20. That in determining allocations in said field, only developed acreage should be considered; and developed acreage shall mean the acreage within a unit on which there is a producing well with the market outlet, or the owner of which is ready, willing, and able to make a pipeline connection or deliver his gas to other market at the going price for gas in the field."

The order contained the following provision:

> "8. All purchasers, takers, and producers of gas in the Hugoton Field shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes, by purchasing, producing, and taking all of the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order."

No appeal was taken and the order became final.

ARGUMENT AND AUTHORITIES

PROPOSITION 1:

Republic has sought and obtained the benefits of the Statutes involved and is estopped to deny their validity.

Republic qualified to do business in the State of Oklahoma long after the statutes involved had been enacted, with full knowledge of said statutes.

It is presumed to have accepted the same as required by their provisions. *Oklahoma Natural Gas Corporation* v. *State,* 161 Okla. 104, 17 P. (2d) 488, 492.

Republic, qualified to do business in the State and accepted the laws of the state, constructed its pipe lines within the state, produced and transported natural gas therein, participated in hearings in which the Commission entered orders construing the statutes involved and has taken affirmative action to secure the benefits of said statutes as applied by the orders of the Commission. Republic made a tender of its natural gas to Cabot Carbon Company

under and pursuant to the orders of the Commission (Order No. 17359; R. 448; Tender of Republic, R. 447). It made application for and obtained permits to use the highways of the State for laying its pipe lines (R. 200-2). Thus Republic sought the benefits, of the statutes involved, in the same manner as Peerless now seeks the same or similar advantages. Republic is therefore estopped to deny the validity of the acts involved.

In the case of *Booth Fisheries* v. *Industrial Commission*, 271 U. S. 208, the court said:

> "More than this, the employer in this case having elected to accept the provisions of the law, and such benefits and immunities as it gives, may not escape its burdens by asserting that it is unconstitutional. The election is a waiver and estops such complaint. Daniels v. Tearney, 102 U. S. 415; Grand Rapids & I. R. Co. v. Osborn, 193 U. S. 17."

In the case of *Wall, et al.* v. *Parrot Silver & Copper Company, et al.*, 244 U. S. 407, the court said:

> "They cannot claim the benefit of statutes and afterwards successfully assert their invalidity."

See also, *The Pipe Line Cases*, 234 U. S. 541, and *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125.

This identical question was raised in the case of *Thompson, et al.* v. *Consolidated Gas Utilities Corp, et al.*, 300 U. S. 55, the case upon which Republic places its principal reliance herein. Although this court in that case held no affirmative steps had been taken to obtain whatever benefits might accrue and, therefore there was no estoppel, it recognized the rule of law stated in the other cases cited above. In the body of the opinion, this court said:

> "Moreover, plaintiffs do not assert rights under the statute which they assail. They have not taken,

and are not obliged to take, and affirmative steps thereunder to obtain whatever benefits may accrue to them because of the restrictions imposed on production for inferior uses. Compare Daniels v. Tearney, 102 U. S. 415, 421; Wall v. Parrot Silver & Copper Co., 244 U. S. 407, 411; Booth Fisheries Co. v. Industrial Commission, 271 U. S. 208, 211."

In the case of *John H. Fahey, et al.* v. *Paul Mallonee, et al.*, 67 S. Ct. Rep. 1552, this Court had under consideration a similar proposition when it said:

"This is a stockholder's derivative action in which plaintiffs sue only in the right of the Association. It is an elementary rule of constitutional law that one may not 'retain the benefits of the Act while attacking the constitutionality of one of its important conditions.' *United States v. San Francisco*, 310 U. S. 16, 29. As formulated by Mr. Justice Brandeis, concurring in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 348, 'The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.'

* * *

"It would be difficult to imagine a more appropriate situation in which to apply the doctrine that *one who utilizes an Act to gain advantages of corporate existence is estopped from questioning the validity of its vital conditions.* We hold that plaintiffs are estopped, as the Association would be, from challenging the provisions of the Act which authorize the Board to prescribe the terms and conditions upon which a conservator may be named." (Emphasis supplied)

Republic contends that the order of the Commission is in effect a legislative enactment made subsequent to the time that Republic entered the State of Oklahoma, and that Republic was therefore not bound by such an interpreta-

tion as to the time it entered the State, acquired its property, made its contracts and began the production and transportation of natural gas. We think this an untenable contention. The Supreme Court of Oklahoma has held that the provisions of Chapter 198, S. L. 1913 are plain and unambiguous, and that the order of the Commission was merely an application of the plain and unambiguous provisions of the statute to the particular situation. If we take the statute and insert at the proper points the names of the parties involved in this litigation, we can arrive at no other conclusion than that the order of the Commission involved herein is but a restatement of the language of the statute itself. To illustrate our point we quote Section 3 of said Act, inserting the names of the parties herein where indicated, with the following result:

> "Any person, firm or corporation (Republic), taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner (Peerless) of the gas in proportion to his (Peerless) interest in gas, upon such terms as may be agreed upon between said owners (Peerless) and the party taking such (Republic), or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner (Peerless) shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. (Laws 1913, ch. 198, p. 440, par. 3.)"

In view of the plain, unmistakable and unambiguous language of the statute no subsequent order of the Commission was necessary to inform and bring home to Republic and its astute counsel the full purpose and tenor of this Act. Truly, in the words of this court in the case of *Pierce*

Oil Corporation v. *Phoenix, supra,* Republic was "plainly within the scope of the statute in effect when it entered the state."

We see nothing in the case of *Nowata County Gas Co.* v. *Henry Oil Co.*, 269 F. 742, to the contrary. In its opinion the court said:

> "The fourth defense urged by the defendant is based upon what is known as the common purchaser statute of the state of Oklahoma. Neither the statute nor any facts to which the statute might apply are pleaded in the answer of the defendant as a defense to the plaintiff's cause of action. The defense, therefore, is not within any issue in the case under the pleadings. Buchtel v. Evans, 21 Or. 309, 28 Pac. 67; Maitland v. Zanga, 14 Wash. 92, 44 Pac. 117; 13 C.J. § 891, note 79."

In its opinion the court in that case quoted with approval from *Munn* v. *Illinois*, 94 U. S. 113, as follows:

> " 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. *When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control'.*" (Emphasis supplied)

In its analysis of *Pierce* v. *Phoenix, supra,* Republic comments upon the fact that the operations involved were purely intrastate which fact distinguishes said case from the case at bar. Insofar as the effect of the order involved herein is concerned, the operations involved are wholly intrastate. There is nothing in the record which indicates that the Commission's order need affect or be a burden on interstate commerce (Opinion of the court, R. 463). As a

matter of fact, since the hearing before the Commission Republic has ceased making deliveries of gas produced in Oklahoma to Northern Natural Gas Company, and its deliveries are now made entirely within the State of Oklahoma.

The statute and order involved are within the proper powers of the state. *Interstate Natural Gas Company* v. *Federal Power Commission*, 329 U. S. 802; *Panhandle Eastern Pipe Line Company* v. *The Public Service Commission of Indiana, et al.*, No. 69 October term, 1947, not yet officially reported.

PROPOSITION 2:

The enactment of legislation governing ownership of property and providing for the reciprocal rights and obligations with reference thereto is within the exclusive jurisdiction of the State.

The Supreme Court of the State of Oklahoma in affirming the order of the Commission involved herein rests its decision primarily upon Chap. 198, Session Laws, 1913 (Appendix D). That statute is an Act defining ownership of natural gas, providing for the reciprocal rights and obligations with reference to the taking of the same. It is a statute which deals primarily and exclusively with the ownership, of natural gas in the State of Oklahoma, by the owners of the fee title or by those who own or hold the right by virtue of a lease to produce the same. It deals only with the nature and extent of ownership of natural gas and the reciprocal rights and obligations of such owners in the production and taking of the same.

It prescribes a remedy in civil damages for its violation, makes such violations a felony and prescribes punishments therefor.

All of such provisions have to do with the ownership of an interest in real property and the reciprocal rights and obligations with reference thereto.

Peerless based its application upon its ownership of natural gas and rights therein under and by virtue of oil and gas leases. It was, within the purview of Chap. 198, Session Laws, 1915, an oil and gas lessee having the right to drill for gas. In the exercise of said right it had drilled a gas well to a producing reservoir or source of supply of natural gas, thereby reducing to possession its share of the gas therein (Sec. 2).

Republic also was the owner of oil and gas leases and had drilled wells into the same source of supply of natural gas and was taking natural gas from a gas field for purposes other than the development of a gas or oil field, operating oil wells and for the purpose of its own domestic use. It had drilled wells into the same common source of supply of natural gas and had the same rights with reference to producing natural gas as did Peerless. It was also subject to the obligations of said Act. (Sec. 3).

Republic was at all times involved draining natural gas belonging to Peerless from underneath Section 14 into which the well of Peerless had been drilled. It was taking natural gas therefrom in violation of said Act, which the Supreme Court of Oklahoma has said is plain and unambiguous. It was therefore obligated to take ratably from each owner of gas (Peerless) in proportion to his interest (the interest of Peerless) in such gas, upon such terms as might be agreed upon between the said parties, or if they cannot agree, at such price and upon such terms as may be fixed by the Corporation Commission after notice and hearing (Sec. 3).

Under the Oklahoma law an oil and gas lease conveys an interest in land and the owner of an oil and gas lease is the owner of an interest in land.

In *Barnes, et al.* v. *Keys, et al.*, 127 P. 261, the Supreme Court of Oklahoma said:

> "An oil lease, investing the lessee with the right to remove all the oil in place, in the premises, in consideration of his giving the lessors a certain per centum thereof, is in legal effect a sale of a portion of the land, and the proceeds represent the respective interests of the lessors in the premises."

To the same effect is *Rich* v. *Doneghey, et al.*, 177 P. 86.

In the case of *Franklin, et al.* v. *Margay Oil Corporation, et al.*, 153 P. (2d) 486, the Supreme Court of Oklahoma said:

> "In a long line of cases, this court has held that an oil and gas lease of the kind here involved vests in the lessee an interest in the land. Barnes v. Keys, 36 Okla. 6, 127 P. 261, 45 L. R. A., N. S., 178, Ann. Cas. 1915A, 515; Rich v. Doneghey, supra; Nicholson Corporation v. Ferguson, 114 Okla. 16, 243 P. 195; Cuff v. Koslosky, 165 Okla. 135, 25 P. (2d) 290, 292. In the latter case, it is said:
>
> " 'This court in the case of Brennan v. Hunter, 68 Okla. 112, 172 P. 49, 50, announced the following rule relative to oil and gas leases:
>
> " ' "The lessees thereby acquired a vested, though limited, estate in the lands for the purpose named in the lease; and are entitled to be protected in the exercise of their rights according to the terms and conditions of the contract. * * * The views above expressed are sustained by the great weight of authority, if not by the unanimous opinions of the courts". ' "

The property involved, therefore, under and by virtue of the leases of the parties, Peerless and Republic, constituted an interest in land.

In the case of *Lindsey* v. *McClure*, 136 F (2d) 65, the Tenth Circuit Court said:

> "However, a water right is a property right and inherent therein is the right to change the place of diversion, storage, or use of the water if the rights of other water users will not be injured thereby. * * *"

In the case of *Citizens State Bank of Barstow, Tex.*, v. *Vidal, Collector of Internal Revenue, et al.*, 114 F. (2d) 380 (10th C.C.A.) the court said:

> "'Property' is a word of very broad meaning and, when used without qualification, may reasonably be construed to include obligations, rights, and other intangibles, as well as physical things."

In the case of *Hoyd* v. *Citizens Bank of Albany Co.*, 89 F. (2d) 105 (6th C.C.A.) the court said:

> "The term 'property' is not defined in the enactment. It is unlimited by any qualifying phrase, and doubtless was used in its ordinary sense as interpreted in the various decisions of the federal and state courts. Property is a nomen generalissimum and extends to *every species of valuable right and interest, including real and personal property, easements, franchises, and other incorporeal hereditaments.* Lucas v. Schneider, 47 F. (2d) 1006 (C.C.A. 6).
>
> "Since the land is situated in Ohio, the Ohio statutes and decisions control." (Emphasis supplied)

In the case of *Wells Fargo & Co.* v. *Mayor, etc., of Jersey City*, 219 F. 699 (3 C.C.A.) the court said:

"Strictly, and as a matter of abstract reasoning, 'property' in a thing is different from the thing itself. It is a right to use, enjoy, and control, and therefore is neither visible nor tangible."

In the case of *Sunderland* v. *United States*, 266 U. S. 226, the Supreme Court of the United States said:

"The general rule is not to be doubted, that the tenure, transfer, *control* and disposition of real property are matters which rest exclusively with the State where the property lies, *United States* v. *Fox*, 94 U. S. 315, 320-321; * * *"

The rule that the ownership of property and rights and obligations with reference thereto are within the exclusive jurisdiction of the legislatures of the several States and subject to exclusive control and jurisdiction of the State, is well and thoroughly established.

See:

Frew, et al. v. *Bowers, Collector of Internal Revenue*, 12 F. (2d) 625 (2 C.C.A.);

Banque De France v. *Chase Nat. Bank of City of New York*, 60 F. (2d) 703 (2 C.C.A.);

Commissioner of Internal Revenue v. *Skaggs*, 122 F. (2d) 721 (5 C.C.A.);

O'Donnell, et al. v. *United States*, 91 F. (2d) 14 (9 C.C.A.);

Hammonds v. *Commissioner of Internal Revenue*, 106 F. (2d) 420 (10 C.C.A.).

In the case of *Commissioner of Internal Revenue* v. *Skaggs, supra*, the court said:

"But the Spanish and French laws touching community property, and those of California and Texas and other states derived from them, are held to be,

in the vocabulary of the civilians, statutes real and not statutes personal; that is to say, they apply to things within a country's jurisdiction rather than to persons wherever they may be or go. Hammonds v. Commissioner, 10 Cir., 106 F. (2d) 420. It should follow *that things, whether movable or immovable, actually situate in a State and effectively within its power, should be governed by the law of that State. It is universally held that real or immovable property is exclusively subject to the law of the country or State in which it is situated, and no interference with it by the law of any other sovereignty is permitted.* 11 Am. Jur., Conflict of Laws, § 30. And the question whether property is real or personal is to be solved by the law of the place where it is actually located. Id., § 29. *These rules apply to questions of the marital rights of spouses in property.* 11 Am. Jur., Conflict of Laws, Sects. 50, 85; Id., Community Property, §§ 10, 11. The Board in this case recognized that the California land was subject to California law only, and that the rents from it prior to accrual were a part of the land, but thought that after accrual the rents were mere choses in action having no actual situs and would take a fictional situs at the domicile of Skaggs for tax purposes, and thus fall under the Texas law and become the property of himself and wife. We think the reasoning too artificial and tenuous. The receipt of the rents, issues or profits of land constitutes its enjoyment. A deed or devise of the income from property gives a corresponding right in the property itself. Commissioner v. Terry, 5 Cir., 69 F. (2d) 969; Irwin v. Gavit, 268 U. S. 161. If the Texas community law can transfer to Skaggs' wife a half interest in the rents and profits of his land in California, it in effect gives her a half interest in the land for the period of the marriage. An immature crop, like unaccrued rent, is a part of the land; and it becomes personalty when gathered—just as rent past due does —no longer passing with the land as part of it; *but*

we think in neither case would the law of another State be effective to change the ownership of the crop on its gathering, or of the rent on its becoming due. In Robinson's Succession, 23 La. Ann. 174, the marital community of a Louisiana couple sought to have the husband's separate estate account for cotton raised on his separately owned farm in Mississippi. It was held the cotton was separate property. In the Hammonds case, supra, a wife whose earnings were her own at her domicile in Oklahoma, received for her services an interest in an oil lease in Texas, which she converted into money and an oil payment. The oil lease was realty in Texas, and what came out of it, cash and oil, was held governed for federal tax purposes by the Texas community law and not by the law of her domicile. The rent on this California land was certainly the property of Skaggs at the moment it became due. We do not think the Texas law, being a statute real, operates to change the ownership instantly afterwards." (Emphasis supplied)

In the case of *Banque de France* v. *Chase Nat. Bank of New York City, supra,* the court said:

"Where ownership is claimed to result from a contract entered into in one country relating to personal property situated in another, the law of the latter governs and must be proved as to the effect of the contract upon the title to the property. Direction Der Disconto-Gesellschaft v. U. S. Steel Corp., 267 U. S. 22; New York Trust Co. v. Island Oil & Transport Co., 33 F (2d) 104 (C.C.A. 2); In re Circle Trading Corp. 26 F. (2d) 193 (C.C.A. 2)."

In the very recent case of *Davies Warehouse Co.* v. *Bowles, Price Administrator,* 321 U. S. 144, this court in the opinion said:

"But in no case relied upon did we achieve uniformity at the cost of establishing overlapping

authority over the same subject matter in the state and in the Federal Government. When we do at times adopt for application of federal laws within a state a rule different from that used by a state in administering its laws, the two rules may subsist without conflict, each reigning in its own realm. *It is a much more serious thing to adopt a rule of construction, as we are asked to do here, which precludes the execution of state laws by state authority in a matter normally within state power. The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state.*" (Emphasis supplied)

Republic contends in its brief that the law of capture still obtains in the State of Oklahoma. The Oklahoma cases which so hold deal with and construe the law applicable to fields in which natural gas is produced in connection with the production of oil and are, therefore, clearly not applicable for the reason that in the instant case we have involved a natural gas field and the laws applicable thereto. The acts herein involved are each and all of them acts which relate to the ownership, production and transportation of natural gas produced in a natural gas field. The cases cited by Republic are, therefore, not applicable.

PROPOSITION 3:

Republic is a common purchaser and a common carrier of natural gas, and it is therefore required to take natural gas ratably from Peerless Oil and Gas Company.

Under the undisputed facts, Republic was not only engaged in the production of natural gas, but it was also engaged in transporting the same. The sole source of its in-

come consisted of profits derived from production and transportation of natural gas. Of the five cents per thousand cubic feet of natural gas received by it from the purchaser, Northern Natural Gas Company, one cent represented income derived from the transportation of such natural gas. Republic sold natural gas direct to consumers on its right-of-way. It sold natural gas to Southwest Public Service Company for distribution and sale to the public, in sixteen towns in Oklahoma, for light, heat and power. It sold a part of the natural gas produced by it to Northern Natural Gas Company for distribution and sale to the public. It sold a part of the natural gas produced by it to Cities Service Gas Company in the State of Oklahoma for distribution by Cities Service Gas Company to the public. It transported natural gas for Cities Service Gas Company, Pioneer Petroleum Company and Benedum Trees Oil Company in consideration of the right accorded to it to use critical materials in the drilling of additional wells. Based on the foregoing evidence of its operations within the State of Oklahoma the Corporation Commission in its order found that Republic was engaged in the business of buying and selling natural gas, and that it was engaged in the transportation of natural gas for compensation, hire and otherwise, and concluded as a matter of law that Republic was a common purchaser and a common carrier of natural gas, and therefore required to take gas ratably from Peerless.

Such findings of the Commission are prima facie, just, reasonable and correct. *Shaffer Oil & Refining Co.* v. *Creek County Gas Co., et al.*, 114 Okla. 258, 246 P. 630. *In Re. Application of Jackson, et al.*, 179 Okla. 577, 66 Pac. (2d) 1101.

If there be any evidence in the record reasonably tending to support said findings and conclusions, the same

should not be disturbed on appeal. In its brief Republic contends that the Supreme Court of Oklahoma held that Republic was not a common purchaser, or a common carrier, in that Republic had not held itself out as a common purchaser and a common carrier, and had not transported gas from any wells other than its own (Brief of Republic, page 10). The quotation as set forth is not a complete sentence and does not correctly and completely set forth the position taken by the Supreme Court of Oklahoma. Rather than holding that Republic was not a common purchaser or a common carrier of natural gas, the Supreme Court of Oklahoma found it unnecessary to pass on that question, stating:

> "Republic contends that the finding that it was a common purchaser of gas, and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or a common purchaser, or had ever offered to purchase gas from, or carry gas for any other person or the public generally.
>
> "We think it unnecessary to pass upon this contention since from the record it clearly appears that the finding of the Commission that 52 O. S. 1941, Sections 223 and 233, being Sections 2 and 3 of Chap. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of the opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well."

Republic cites one case in support of its contention that to constitute one a common carrier there must be a holding out to the public generally. *Michigan Public Utilities Co.* v. *Duke*, 266 U. S. 570, 576. That case dealt with

motor carriers rather than with pipe lines engaged in the transportation of natural gas, and the opinion of the court, in stating the nature of carrier's operations, clearly distinguished the situation therein involved from that in the instant case. The Supreme Court in that case, referring to the carrier, said: (a) his sole business is interstate commerce; (b) he has no power of eminent domain or franchise under the state, *and no greater right to use the highways than any other member of the body politic,* (c) he does not devote his property to any public use, (d) he has done nothing to give rise to the duty to carry for others, (e) the public is not dependent on him, or the use of his property for a service, and has no right to call on him for transportation.

Irrespective of whether or not the findings of the Commission are supported by the evidence, Republic has made no proper attack on said findings of the Commission. It has no where in its assignments of error (R. Page 474) or in its statement of points to be relied upon (R. Page 478) contended, or assigned as error, that the findings of the Commission are unsupported by the evidence. The findings of the Commission were not overthrown by the Supreme Court of the State, the same are not here under attack and must therefore stand. Since Republic admits that, if it is a common purchaser or a common carrier, the order is proper and since the findings of the Commission in that respect must stand; the order of the Commission should not be stricken down and this appeal should be dismissed. *Seabord Airline Ry* v. *Watson,* 287 U. S. 86, *Patterson, et al.* v. *Stanolind Oil & Gas Co., et al.,* 305 U. S. 376.

Chapter 99 S. L. 1913 (Appendix C) (Now carried as Sections 21 to 35 of Title 52 O. S. 1914) provides that

every person, joint stock company, limited co-partnership, partnership or other person now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping or transporting natural gas shall not have or possess the right to conduct or engage in said business or operations, or have or possess the right to locate, maintain or operate the necessary pipe line, fixtures, etc., or use the highways, or any part thereof, or have or possess any right or rights concerning said business or operation, in whole or in part, except as authorized and subject to the provisions of said act. Said act further provides that any corporation, joint stock company, limited co-partnership, partnership or other person now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines for hire, compensation or otherwise shall be a common purchaser of natural gas.

Under the admitted facts in this case, Republic does not come within the exception contained in Chap. 99, S. L. 1913, which is as follows: "All persons, firms, associations and corporations are exempt from the provisions of this act except from the provisions of Section 9 hereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, * * *"

Republic does not come within the foregoing exception, but is expressly excluded therefrom by the enactment by the same Legislature of Chap. 93 S. L. 1931. (Appendix F), which provides that the term "public utility" shall be taken to mean and include every corporation, association, company, individual, their trustees, lessees, receivers, successors or assigns, that now or hereafter may own, operate

or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public, for the conveyance of gas by pipe line, or for the production, transmission, delivery or furnishing of heat or light with gas.

The Supreme Court of Oklahoma has on numerous occasions construed the last cited statute, and each time has construed the same in such manner as to make it applicable to and governing the operations of Republic. In *Southern Oklahoma Power Company* v. *Corporation Commission, et al.*, 96 Okla. 53, 220 Pac. 370, the Supreme Court of Oklahoma said:

> "The plaintiff in error *contends that the Southern Oklahoma Power Company does not hold itself out to the public as furnishing power or electricity; that it simply furnishes electricity to one public utility under private contract;* that this is simply a case of a private corporation furnishing a public utility with a commodity which the latter in turn distributes for public use; and that the element is lacking which would determine that it is a public utility, viz., the impression of its service with a public use.
>
> "It is our opinion that the statutory definition of a public utility is sufficiently broad to include a plant operated as the plant of the plaintiff in error, where it generates electricity and furnishes same under a contract to a public utility for distribution to the public. This corporation operates a plant which furnishes and supplies a commodity (electric energy) to be furnished to the public for the production of electric current for light, heat, and power. The statute does not require that the corporation furnish the commodity to the public, but, if it furnishes a commodity for the purpose of that commodity being delivered to the public

> for the production of light, heat, or power, it comes within the statutory definition. It is our opinion that the statute impresses the service rendered by this corporation with a public use."

The Supreme Court of Oklahoma has made the same application of the same statute as to companies which produce natural gas for light, heat and power. *Oklahoma Natural Gas Co.* v. *Corporation Commission, et al.*, 90 Okla. 84, 216 Pac. 917, *Carey, Receiver* v. *Corporation Commission*, 168 Okla. 487, 33 Pac. (2d) 788.

In the case *In re. Assessment of Champlin Refining Co.*, 129 Okla. 166, 264 Pac. 160, the company was engaged in the transportation of oil rather than the transportation of natural gas, but the facts therein involved and the contentions made by the company are practically identical with the issues involved and the contentions made herein. In that case the company contended that the operation of its pipe lines in gathering and transporting crude oil was incident to, and a part of its refining business conducted at Enid, with the exception of four certain private contracts with purchasers, whereunder crude oil was transported to its storage tanks with the option of purchase.

In passing upon the contentions there made, the Supreme Court of Oklahoma said:

> *"Substantially, in principle, the same contentions were made and determined adversely in Pierce Oil Corporation* v. *Phoenix Ref. Co.*, 79 Okla. 36, 190 Pac. 857, affirmed in 259 U. S. 125, 42 Sup. Ct. 440, 66 L. Ed. 855. That case involved the question of regulation of the Pierce Oil Corporation by the State Corporation Commission as a common carrier by virtue of having operated its pipe lines for the transportation of crude oil for hire. In our view, that case foreclosed controversy upon the proposition that a private corporation may, by the conduct

> of its business, resolve itself into a public service corporation as defined by law, and thus become subject to regulatory control by the proper agency of the state. In the case at bar the moment complainant engaged in the transportation of crude oil for hire, if it was not prior thereto in law, a public service corporation, it was then and there by the law of the state declared to be a common carrier. Section 7944 C. O. S. 1921. In that event it must follow that the property of the corporation is rendered subject to assessment for purposes of taxation as public service corporation property by the State Board of Equalization, as was done, unless the decree of the district court of Garfield county effectually exempted complainant." (Emphasis supplied)

Republic produces natural gas. It transports and sells the same to public service companies within the State of Oklahoma for distribution to the public for light, power and heat. It is therefore a public utility, and is not exempt from the common purchaser and common carrier statutes of the State of Oklahoma. Its operations are subject to regulation by the State of Oklahoma. *Panhandle Eastern Pipe Line Co.* v. *The Public Service Commission of Indiana, et al.*, No. 69, October Term, 1947, Supreme Court of the United States.

Entirely aside from Chap. 93 S. L. 1913, or any other legislative enactment, there is ample authority to the effect that the production of oil and/or gas is imposed with a public interest or use. See *Russell, et al.* v. *Walker*, 160 Okla. 145, 15 Pac. (2d) 114; *Champlin Refining Co.* v. *Corporation Commission, et al.*, 286 U. S. 210; *Gulf Land Co., et al.* v. *Atlantic Refining Co., et al.*, 131 S.W. (2d) 73.

Republic cites the case of *Garkane Power Co.* v. *Public Service Commission*, 98 Utah 466, 100 P. (2d) 571, as

authority for the contention that Republic is not a common carrier or utility. However, in the body of the opinion of that case we find the following:

> "The Public Service Commission of West Virginia, a body of equal dignity with our Utah Public Service Commission, in considering an application for exemption from its jurisdiction, held, In Re Harrison Rural Electrification Asso., Inc., 44 P. U. R., N.S., 7, that a cooperative power association in all essential respects like Garkane was 'a public utility within the purview of the state's statute'."

In 13 C. J. S. at page 31 we find the following:

> "If the transportation is a part of an undertaking on the part of the carrier, for which there is a valid consideration, it will be a carriage for hire, although it is agreed that, in connection with the general advantage resulting to the carrier from the entire transaction, this particular part of the service is to be rendered without charge."

This statement of the law is exactly applicable (1) to the profit derived by Republic from the transportation of natural gas which it produces—and delivers to Northern Natural Gas Company, in that one cent per thousand cubic foot of gas paid by Northern Natural to Republic was for such transportation, and (2) to the transportation, by Republic of natural gas for Cities Service, Pioneer Petroleum Company and Benedum Trees, in that although Republic purportedly made no charge for its transportation of such gas there was a very valuable consideration realized by Republic in connection with the entire transaction in that Republic was permitted to use critical materials in the drilling of additional wells.

We therefore respectfully conclude (1) that since there has been no proper attack made on the findings of

the Commission, the same must stand, and the conclusions and order of the Commission based thereon must stand, and (2) that Republic is a utility, a common purchaser and a common carrier, and therefore subject to regulation by the Commission as in the instant case.

PROPOSITION 4

The order of the Commission involved herein constitutes a valid exercise of police powers of the State for the protection of correlative rights.

Entirely aside from the utility, common carrier and common purchaser statutes of the State of Oklahoma, the Commission had ample authority to make the order involved herein, under Chap. 198, Session Laws, 1913, or Chap. 197, Session Laws, 1915. The authorities uniformly and universally recognize the inherent power of the State to protect correlative rights in the exercise of its police powers.

Under the provisions of Chap. 198, Session Laws, 1913 (Appendix D) Peerless was the owner of all natural gas under the surface of section 14 into which it had drilled its well. By drilling the well involved it had reduced such natural gas to possession. Under said Act any person, firm or corporation taking gas from a gas field, except for the purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own use, must take gas ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree, at such a price and upon such terms as may be fixed by the Commission.

Chap. 197, Session Laws, 1915 (Appendix E) provides, among other things, "the said Commission is authorized and directed to promulgate rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any well in such common source of supply within the State so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." Said statute places the prevention of waste and the protection of correlative rights of the public, and the private rights of all those having a right to produce from a source of supply, on an equal basis. It does not provide that correlative rights may be protected only when the Commission considers it necessary to prorate gas for the purpose of preventing waste. The prevention of waste and the protection of correlative rights of all those having right to produce from a source of supply are placed upon an equal basis; neither is dependent upon the other and the Commission may invoke its authority and jurisdiction for the protection of correlative rights alone, as well as for the prevention of waste of natural gas.

Republic, without citation of authority, contends that there is no justification for the Commission's order, although it protects correlative rights, unless said order is also made for the purpose of preventing and does prevent waste.

In that connection, we wish to call to the attention of this Court excerpts from the opinion in the case of *Thompson, et al.* v. *Consolidated Gas Utilities Corporation, et al.*, 300 U. S. 55. This case is, in our judgment, ample and explicit authority for the position that an order of a regulatory body, such as involved herein, is justified

if it bears a reasonable relationship to the protection of correlative rights, alone. In that opinion the Court said, "But, obviously, the proration orders would not be valid if shown to bear no reasonable relation either to the prevention of waste or of the protection of correlative rights, or if shown to be otherwise arbitrary." Thus, this Court, in that opinion, has laid down the principle that an order is valid if it has a reasonable relation either to the prevention of waste or the protection of correlative rights.

In that case the order involved was stricken down for the reason that it bore no reasonable relation either to the prevention of waste or the protection of correlative rights, the Court saying:

> "In the light of these findings the lower court concluded that the order was not intended to prevent waste attributable to plaintiffs; and that it was not intended to adjust correlative rights in the common reservoir for the purpose of averting unjust drainage from the reserves of those wells lacking pipe line connections. On the other hand, the Court concluded that the proration ordered, with its drastic limitation of output from wells now connected to pipe lines, will obviously not protect those wells against undue drainage to other parts of the field, but will deprive their owners of the protection which fuller production would offer. These findings are adequately supported by the evidence."

This Court, there, recognized the right of a Commission, by order such as involved herein, to protect owners against undue drainage to other parts of the field. In that case the order not only did not protect the complainants against drainage, but in fact prevented them from protecting themselves and their gas reserves against undue drainage of their natural gas to other parts of the field.

In the instant case Peerless contends and the evidence is without dispute, that the order of the Commission is

necessary to prevent all its natural gas underlying section 14 from being drained by the wells of another.

In the Thompson case the complainants contended, the evidence established, and the trial court found, that the order was not necessary to protect the proponents of the order from drainage, but in fact prevented the complainants from protecting themselves from drainage from their reserves to the reserves of others.

In the instant case Peerless contends and the evidence without dispute establishes that its property is being taken without any compensation by another (Republic) and that the order is necessary to protect Peerless from drainage.

In the instant case the pipe line company (Republic) entered the State, made its contracts, and engaged in the production of natural gas long after the enactment of the plain and unmistakable provisions of the statutes involved.

In the Thompson case the complainants had made their contracts, had constructed their lines, had drilled their wells and had produced the gas under existing laws prior to the enactment of the statute involved, and contended that the subsequently enacted statute impaired their contractual rights and took away from them vested property rights.

In the instant case the property and vested property rights of Peerless are being taken by Republic.

The order involved in the Thompson case was stricken down because it bore no reasonable relation either (1) to the prevention of waste, or (2) to the protection of correlative rights. The court found that the complainants were producing their property (1) without waste and (2) without damage and injury to others.

In the instant case, according to the undisputed evidence, the findings of the Commission, and those of the

Supreme Court of Oklahoma, Republic is not only taking but eventually will confiscate the properties of Peerless. The order is therefore necessary to protect correlative rights.

We have no doubt, from the language of the opinion in the Thompson case, that had the situation, there, been the same as that which exists in the instant case, and had the order of the Commission been necessary to protect the proponents from drainage by the complainants, the decision of this Court would have been to sustain the order of the Commission there involved. This court in the Thompson case clearly held, in our judgment, that as a matter of law there is no difference in an order which requires a direct connection, as does the order involved herein, and an order which by indirection through proration obtains the same result. Either order would be valid if it bore a reasonable relation either (1) to the prevention of waste or (2) the protection of correlative rights.

Wholly aside from the question of waste of a natural resource, we find ample authority in the decisions of the states, and of this Court, to support an order, such as is involved, when based solely and entirely upon the protection of property rights or of correlative rights such as are involved in the instant case.

A well recognized application of this rule has to do with the zoning ordinances of municipalities, in so far as the same affect the drilling of wells for the production of oil and gas. In such instances the powers of the local authorities are based solely and entirely upon the police powers, and are exercised for the purpose of *protecting the safety and/or property of the citizens.* One of the earliest cases involving such a situation is that of *Marrs, et al.* v. *City of*

Oxford, et al., 32 F. (2d) 134 (8 C.C.A.). In that case there was involved a zoning ordinance of the City of Oxford which, for the purpose of protecting the lives and property and the exercise of property rights by its citizens, prohibited the drilling of more than one well in any one city block. Plaintiff sought to drill a well within 75 feet of a well then being drilled in the same block, and brought an action to enjoin the City from enforcing the zoning ordinance against him. The Circuit Court of Appeals upheld the ordinance as being a proper exercise of the police power, saying: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community." It cited with approval *Winkler* v. *Anderson*, 104 Kan. 1, 177 Pac. 521, 3 A. L. R. 268 to the effect that: "The police power extends, not only to the protection of the public safety, health, and morals, but to the promotion of the common convenience, prosperity, and welfare," and further that "Steam and electric railway rights of way may be exploited, and unless the works, structures, establishments, activities, and products of mining operations be kept at a safe distance from railway tracks, life and property might be endangered, commerce impeded, and the general welfare seriously affected." The foregoing decision which recognizes the validity of legislation and regulations based on the police power for the purpose of protecting property or property rights has been recognized and followed by the Supreme Court of the State of Oklahoma in similar matters.

In the case of *Amis* v. *Bryan Petroleum Corporation*, 185 Okla. 206, 90 Pac. (2d) 936, there was involved an application of the police powers, by the City of Oklahoma

City, under the zoning statutes and the city zoning ordinances enacted pursuant thereto.

In that case the Supreme Court of Oklahoma upheld the right of the City Board of Adjustment to fix the pro rata basis upon which non-assenting owners in a drilling block should participate in a well drilled therein, holding that the board was authorized to award reasonable lease bonuses to non-assenting lot owners or to permit them to participate in the operations upon posting of a bond within the stated time. The order also required the property owner upon whose property the well was drilled to share the 1/8th royalty, from the production derived from the well, with the owners of other property in the drilling block, each of whom should participate in the 1/8th royalty in the ratio that the area of each bore to the total area in the drilling block. In passing upon the objections there made to the operation of the order, which objections are similar to those made by the Republic, the Supreme Court of Oklahoma said:

> "The fundamental right to full use and enjoyment of private property by its owner is not abridged in cases of this character except by valid regulatory measure enacted under the police powers of the State or municipality. The privilege of producing oil and gas from one's property is inherent in ownership, and may be fully exercised until legally restricted or entirely prohibited by enactments looking to the public welfare. The production of oil and gas is inherently dangerous, and it should be borne in mind that by reason of the very nature of the industry a greater necessity for more strict regulation would arise than in the usual and customary business conducted in a city. Statutes delegating general police powers are, in cases of this character, entitled to a broader and more liberal construction than is ordinarily accorded. The

municipality will not be held strictly within the powers as designated. It may inaugurate any regulation that by reasonable implication will fall within its delegated powers. See 12 C. J. 910, sec. 418; 43 C. J. 193, sec. 190.

The court held that there was no taking of property in the sense prohibited by the Constitution.

Other cases by the Oklahoma Supreme Court to the same effect are: *Cook* v. *Westgage-Greenland Oil Co. et al.*, 185 Okla. 209, 90 Pac. (2d) 940; *Inland Development Co.* v. *Beveridge, et al.*, 185 Okla. 174, 90 Pac. (2d) 942; *Phillips Petroleum Co.* v. *Davis, et al.*, 194 Okla. 84, 147 Pac. (2d) 135; *Harper, et al.* v. *Lord, et al.*, 195 Okla. 386, 158 Pac. (2d) 472.

Republic complains that the effect of the order involved herein will be to require it to share its markets and its pipe line facilities with Peerless.

This merely confirms our suspicion that Republic believes it has a corner on the markets, one of the things the Legislature of Oklahoma sought to prevent in the legislative enactments involved herein.

Republic is admittedly selling gas to Cities Service Gas Company and Northern Natural Gas Company, which companies are, according to Republic's admission, common purchasers of natural gas (Republic's Brief, Page 3).

If these companies be common purchasers and common carriers, how can it be said that Republic will be required to share its markets with Peerless. Such markets are public markets.

If there was any question as to the facts which justified the enactment of the legislative acts involved, these con-

tentions and admissions of Republic should be sufficient to establish the existence of the same. In any event such facts are presumed to have existed. *Pacific States Co.* v. *White*, 296 U. S. 176, 186.

In the case of *C. C. Julian Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 P. 841, cited by Republic, the Supreme Court said:

> "Surface owners of land have the right to drill for and reduce to possession the oil and gas *beneath*; but this right is to all of the owners alike, *and when numerous surface owners seek to produce from a common pool, it is within the police power of the state, in keeping with due process of law, to require the several surface owners to produce same under reasonable regulations to the end that some of said owners may not take from the common source more than their equitable share.*" (Emphasis supplied)

In the case of *Russell* v. *Walker*, 160 Okla. 145, 15 P. (2d) 114, the Supreme Court of Oklahoma said:

> "It is within the police power of the state to impose reasonable regulations *to the end that some of said owners may not take from the common source of supply more than their equitable share.*" (Emphasis supplied)

In the case of *Grison Oil Corporation, et al.* v. *Corporation Commission*, 186 Okla. 548, 99 P. (2d) 134, the Court said:

> "The requirement of ratable, or proportionate, taking is designed for the protection of private rights of individual operators."

Thus the Supreme Court of Oklahoma in the *Grison* case recognizes "private correlative rights" (of Peerless) of which the Republic is so contemptuous.

In the case of *Gruger, et ux.* v. *Phillips Petroleum Company*, 135 P. (2d) 485, the first paragraph of the syllabus recognizes the very position which we, here, seek to maintain:

> "The law of 'capture' under which oil and gas are owned by the one lawfully reducing them to possession, still obtains in Oklahoma, *except as such law has been or may be regulated or restricted under laws passed in the exercise of the police power, such as the proration and spacing statutes and city zoning ordinances*, 11 O. S. 1941, Sections 401-410; 52 O.S. 1941, Sections 81-138, Section 87." (Emphasis supplied)

There are many decisions of the Supreme Court of the United States which are to the same effect as the Oklahoma decisions cited above.

The zoning ordinances of the City of Oklahoma City were upheld in the case of *Gant* v. *Oklahoma City*, 289 U. S. 98.

The Supreme Court of Oklahoma, in the case of *Oklahoma Natural Gas Corporation* v. *State*, 161 Okla. 104, 17 Pac. (2d) 488, had under consideration a set of facts similar if not identical with that involved in the instant case. The Order entered was quite similar to that entered in the instant case, the only essential difference being that in the Oklahoma Natural case the Commission went even further in its Order than did the Commission in the instant case.

For a proper consideration of this case we will set out as briefly as possible the facts involved, the contentions made by those who opposed the Commission's Order and the final result obtained.

The complainants in that case were the owners of the minerals lying in and under certain lands in Creek County, Oklahoma, which was under lease to Olean Petroleum Co. which had in the month of November, 1926, entered into a contract with the respondent, Oklahoma Natural Gas Corporation by the terms of which the said Oklahoma Natural Gas Corporation was to purchase and remove from said lease the natural gas then being produced and to be produced in the future on the said lease from two gas wells which had been drilled and completed thereon. Lima Oil & Gas was the owner of leases covering adjoining properties in which two wells had been drilled, which wells were connected with the pipe lines of Empire Gas & Fuel Co., under contract with said lessee, Lima Oil & Gas Co.

The complaint alleged that Lima Oil & Gas had produced from its said wells, drilled on off-setting properties, and sold and delivered to the Empire Gas & Fuel Co., natural gas in amounts far in excess of that which Olean Petroleum Co., had produced and sold to Oklahoma Natural Gas Corporation. The complaint asked the Commission to make an order requiring Empire Gas & Fuel Co., to connect its pipe line or lines with the wells drilled on complainants property and to take therefrom an amount of gas sufficient to equalize the takings from said well as compared with the gas taken from the off-setting wells and that Oklahoma Natural Gas Corporation be ordered, directed and required to permit the said Empire Gas & Fuel Co., to connect its pipe line to said well located on complainant's property for the purpose of equalizing the taking therefrom as compared with the taking from said wells off-setting the same to which Empire Gas & Fuel Co.'s lines were already connected. The complaint alleged and the evidence showed that although the well on complain-

ant's property had an open flow capacity of gas in excess of the combined open flow of both the wells belonging to Lima Oil & Gas Co., to which said Empire Gas & Fuel Co., had connected its lines, that since November 1, 1926, and up to and including September 30, 1929, the Oklahoma Natural Gas Corporation had purchased and removed from the wells owned by these complainants and in which they are interested as royalty owners, 1,177,151,000 cu. ft., of natural gas, while the Empire Gas & Fuel Co., had purchased and removed from the off-setting wells belonging to the Lima Oil & Gas Co., and described as Benjamin Well No. 2 and Benjamin Well No. 3, 3,416,072,000 cu. ft. of gas, or 2,238,921,000 cu. ft. of gas in excess of the amount which the Oklahoma Natural Gas Corporation had been able or willing to take from the well of the complainants or from the well in which they were interested as royalty owners; and that by reason of said unequal taking as between the Oklahoma Natural Gas Corporation and the Empire Gas & Fuel Co., complainants had been sustaining great and irreparable damage and loss from the fact that the gas belonging to complainants, owing to the inequitable and unequal taking as between two said common purchasers of gas, was being drained from beneath the premises of complainants and the wells in which they were interested and taken out from the wells off-setting those of complainants and to which the lines of the Empire Gas & Fuel Co., were connected and belonging to the Lima Oil & Gas Co. A plat was attached to the complaint showing the location of the wells and their relative position in the common pool under consideration.

The Commission's Order entered in that case required Empire Gas & Fuel Co., to connect its lines to the well located on complainant's properties and to take therefrom natural gas until the take from complainant's wells had

been equalized with that taken from offsetting wells. The Order required Oklahoma Natural Gas Corporation to permit such connection to be made and required that Lima Oil & Gas Co., permit such connection and a proportionate reduction in the production from its wells until such equalization was had. The Order involved affected Oklahoma Natural Gas Corporation and Empire Gas & Fuel Co., which companies were admittedly utilities, common carriers, and common purchasers, but it also affected alike Lima Oil & Gas Co., and Olean Petroleum Co., which companies were lessees and producers of natural gas not engaged in piping or transporting natural gas.

The issue involved in that case was briefly and concisely stated in the appellant's brief as follows:

> "There is presented here only the question as to the remedy to be applied when one producer, through the medium of a common purchaser with whom it has a contract, is taking more gas than its ratable share, as determined by the market and the total common available supply." (p. 496).

The appellants in that case raised and presented all questions raised herein by Republic. The appellants there contended:

1. That the Commission had no jurisdiction to enter the Order involved for the reason that the prevention of waste is the main object of the 1915 Act and waste was not involved.

2. That the Commission could not establish relief as between two parties brought into the controversy because of third pipe line in the field, and there was no evidence before the Commission as to the amount of gas being taken by that line.

3. *It was never the intention of the Act that the Commission should compel the taking of more gas from one well than was being taken already* but only that it should prevent the taking of a greater amount by one person than the law allows while other persons were remaining within the proper ratable sphere as justified by market demand.

4. That the Commission's Order in effect created a contract which was beyond the Commission's power to make and in this connection stated:

"It is not denied that the Commission has the power, under proper circumstances, to abrogate a contract which is in violation of public policy; to modify such a contract; and particularly where rates are concerned, or service, to specify conditions or activities regardless of contract. It is not, however, conceivable that the Commission can in effect create and execute a contract in which the contracting parties are two pipe line companies, two leasing companies and a group of lessors; creating a situation which vitally affects more or less seriously each individual and company involved; and, compels the lion and the lamb to lie down together, regardless of the rights or desires of either." p. 494.

5. That the Commission's jurisdiction, as exercised, infringed upon constitutional rights, *and that the right of Lima Oil & Gas Co., under its lease, and the Olean Petroleum Co., under its lease, is to sell the gas, that they had made contracts for its purchase with different companies,* and that the Corporation Commission could not interfere with such contracts by virtue of its regulations.

6. That if the Empire Gas & Fuel Company should attempt to obey the order of the Commission, it would have to to so at the expense of other sellers

in the field, and that each cubic foot taken from the well on complainant's property to supply its market must result in a reduction of the takes from any other wells to which it may be connected in the field.

7. That the Order took no account of any other wells in the field and made no uniform ruling except as to the one specifically involved.

8. That the Order took no account of the distinctions between inter-state and intra-state market.

9. That the effect of the Order was that no contracts whatever could be made and no dependable reservoir of supply created.

The Supreme Court of Oklahoma in passing on these contentions, in each instance, ruled against the appellants and sustained the Order of the Commission.

That decision is a full and complete answer of each and every contention made by Republic in the instant case.

In line with the decision of this court in the case of *Pieree Oil Corporation* v. *Phoenix Refining Co., supra,* the Supreme Court of Oklahoma in the *Oklahoma Natural Case, supra,* said:

> "Under these sections of the statute there is not only imposed the duty upon common purchasers of natural gas within the State of Oklahoma to take the gas of all without discrimination, but as if that was not sufficient, Section 7928 imposes an obligation upon all such concerns to accept explicitly and with the proper authority all the terms and provisions of the act as a condition precedent to its engaging in the business of transporting, purchasing or piping natural gas at all. We assume that each of the respondents in this case have filed these ac-

ceptances and have obligated themselves to conform to the terms and provisions of the statute as required by law." (p. 492).

In referring to the contention that contracts were affected by the Commission's Order, the same Court said:

> "As applied to the proposition of contracts having been made, and therefore the lessee could handle the entire production as they saw fit, we think unquestionably that the proration law must be taken into the account in judging of the contracts, and that, whenever the contracts violate the law, the usual rule of a contract being made in violation of a law and subject thereto would apply. We think that these contracts were made entirely subject to the law on the subject of proration that had been theretofore enacted. In fact, such was the understanding of the parties when they made the contracts, and they provided accordingly, as shown by extracts quoted from the contract." (p. 497).

In the Oklahoma Natural case the Oklahoma Supreme Court not only construed Chapter 197 S. L. 1915, but held the penalties provided in Chapter 198 Session Laws 1913 were not exclusive remedies.

Republic argues in its brief that because the Commission had fixed an allowable for each well in the field, Republic is entitled to take the allowable, provided for in the general or basic order of the Commission, and so long as it takes no more than such allowable Republic is not amenable to any other or further order of the Commission. The fallacy of this argument is apparent. If that argument be followed to its conclusion, Republic could drain all the gas from underneath said Section 14 into which the well of Peerless has been drilled and Peerless would have no recourse. The purpose and intent of the basic order is that Republic can take its allowable when and only when other

producers in the field are afforded the same opportunity. The basic order of the Commission clearly contemplates this because it provides for a tender to be made, by the owners of unconnected wells, of the gas produced and to be produced therefrom. Such tender is the basis and condition precedent for a proceedings such as that which we have involved in the instant case. What other purpose could be served by such a tender? The fact that the allowable of an unconnected well may not be cancelled is no comfort or protection to the producer who has tendered his gas. If conditions continue, in the future as in the past, Peerless would accumulate millions of cubic feet of unused allowable while Republic would completely and entirely drain all of the natural gas underneath said Section 14. It is presumed that the law and the Commission will not do a futile thing. An allowable which cannot be used is certainly a most futile thing. The only conclusion to be reached is that in providing for a tender the Commission contemplated that such tender should be a condition precedent to the making of an application seeking a connection, such as has been made in the instant case, and is a part and parcel of the plan of proration provided for in the basic order of the Commission. The basic orders of the Commission (Appendicies G and H) require all producers and takers to comply with the common purchaser and ratable taking laws of the state.

Where citizens of a state have a common interest and use or enjoyment of any type of property, the police power is bound to extend to the adjustment of that use so that all may be protected. *Bacon* v. *Walker*, 204 U. S. 311. This case involved the right of the State of Idaho to prohibit persons owning sheep from permitting them to graze within two miles of the possessory claims or dwelling houses of other people. It was admitted that all persons

had the right to graze stock on the public domain, and the object of the statute was to adjust the rights of those owning cattle with those owning sheep. The Supreme Court in sustaining the validity of the statute, said:

> "Is it true, therefore, even if it be conceded that there is right or license to pasture upon the public domain, that the state may not limit or regulate the right or license? Defendants in error have an equal right with plaintiff in error, *and the state has an interest in the accommodation of those rights.*" p. 315. (Emphasis supplied)

The Court referred to the opinion of the State court as follows:

> "And the court pointed out that it was not the purpose or effect of the statutes to make discriminations between sheep owners and owners of other kinds of stock, but to secure equality of enjoyment and use of the public domain to settlers and cattle owners with sheep owners." (p. 319).

Thus it is seen that the correlative rights doctrine has been applied to the adjustment of conflicts between sheep owners, cattle owners, and owners of dwellings. No physical waste of a natural resource was involved, and none was needed. Co-equal and co-existing rights in a common property were sufficient for the police power to intervene and adjust conflicts, and to insure to each class the opportunity to continue in business and enjoy the public domain.

There are many cases where courts of equity, even in the absence of statute, have intervened to prevent one person from securing an unjust proportion of a common fund of percolating or artesian waters to the detriment of others entitled to enjoy the benefit of the waters. See *Bassett* v. *Salisbury Mfg. Co.*, 43 N. H. 569, 82 Am. Dec. 178; *Katz* v. *Walkinshaw*, 141 Cal. 116, 70 Pac. 663; *Meeker* v. *East Orange*, 77 N. J. L. 623, 74 Atl. 379;

Forbell v. *New York*, 164 N. Y. 522, 58 N. E. 644, 51 L. R. A. 695.

There are, of course, other cases which follow the doctrine of *Acton* v. *Blundell*, 12 Mees, & W. 324, to the effect that, in the absence of a governing statute, one may not be restrained in the amount of percolating waters he withdraws, regardless of the effect of such withdrawals on others. The so-called American rule of reasonable use, however, has constantly grown, especially in the western states where local conditions made some sort of control vital to the interest of the people. Statutory regulations designed to accomplish the protection of the rights of all entitled to produce such waters have been enacted and sustained. *Ex Parte Elam*, 6 Cal. App. 233, 91 Pac. 811; *Eccles* v. *Ditto*, 23 N. M. 235, 167 Pac. 726.

As was said by the court in *Eckel* v. *Springfield Tunnel & Development Co.*, 262 Pac. 425 (quoting from authorities):

> "There is a distinction between the English rule as modified by the modern American rule of reasonable use and the rule of correlative rights. Under the rule of reasonable use some of the authorities hold that a land owner has a right to make such a beneficial use of the water found percolating through his land to the extent that may be necessary for the improvement of his land, so long as it is used thereon, although in so doing he may drain the lands of his neighbors. Upon the other hand, the rule of correlative rights to these owners is the rule which abrogates the English rule as to these waters and holds that the rights of all land owners over a common basin, saturated strata, or underground reservoir, are coequal or correlative, and that one land owner can not extract more than his share of the water even for use on his own lands,

where the rights of others are injured thereby." (p. 427)

The doctrine of the water cases had its growth, not because of the existence of waste and the use which was made of the waters involved, but by virtue of the recognition on the part of courts and legislatures that, where many are withdrawing or have the right to withdraw from a common source of supply, the coequal rights of all must necessarily be adjusted or regulated so that each may have the opportunity to enjoy the common fund.

The principle is a logical outgrowth of the *sic utere* doctrine, which is the very foundation of the police power of the state.

Head v. *Amoskeag Mfg. Co.*, 113 U. S. 9, is apposite. The Legislature of New Hampshire passed a law authorizing the erection of mill dams upon and across any non-navigable stream, even though the erection of the dam had the effect of overflowing, draining or injuring the land of other persons, provided, however, for the payment of damages to the persons damaged. In effect the statute, in a backhanded sort of way, conferred the right of eminent domain on mill owners. The Supreme Court, however, refused to pass on the constitutionality of the statute as a delegation of the right of eminent domain, because the statute could be sustained on the right of the Legislature under its police power to regulate and adjust the rights of proprietors adjacent to streams. The opinion has this language:

> "We prefer to rest the decision of this case upon the ground that such a statute, considered as regulating the manner in which the rights of proprietors of lands adjacent to a stream may be asserted and enjoyed with a due regard to the interests of all, and to the public good, is within the constitutional power of the Legislature.

> "When property, in which several persons have a common interest, cannot be fully and beneficially enjoyed in its existing condition, the law often provides a way in which they may compel one another to submit to measures necessary to secure its beneficial enjoyment, making equitable compensation to any whose control of or interest in the property is thereby modified." (p. 21)

In the *Head* case the Legislature decided that the co-existing rights of the owners of lands adjacent to non-navigable streams could be fairly adjusted by permitting one to overflow the land of another in the erection of a dam and providing for compensation. This was the remedy which the Legislature decided was necessary to provide for the adjustment of the conflict presented by the interests there involved.

Under a different fact situation, it has been held that the Legislature of a state has the power to require each owner of property, in which others have an interest, to incur expense even against his will. In *Wurts* v. *Hoagland*, 114 U. S. 606, a New Jersey statute was sustained providing for the drainage of any low or marshy land, upon proceedings instituted by at least five owners of separate lots included in the tract, the expense to be shared by all the owners. The opinion has this language:

> "This review of the cases clearly shows that general laws for the drainage of large tracts of swamps and lowlands, upon proceedings instituted by some of the proprietors of the lands to compel all to contribute to the expense of their drainage, have been maintained by the courts of New Jersey (*without reference to the power of taking private property for the public use under the right of eminent domain, or to the power of suppressing a nuisance dangerous to the public health*) as a just and constitutional exercise of the power of the legislature

to establish regulations by which adjoining lands, held by various owners in severalty, and in the improvement of which all have a common interest, but which, by reason of the peculiar natural condition of the whole tract, can not be improved or enjoyed by any of them without the concurrence of all, may be reclaimed and made useful to all at their joint expense." (p. 613). (Emphasis supplied)

The doctrine of the two cases last cited was reiterated in the leading case of *Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112, in the following language:

"If it be essential or material for the prosperity of the community, and if the improvement be one in which all the landowners have to a certain extent a common interest, and the improvement cannot be accomplished without the concurrence of all or nearly all of such owners by reason of the peculiar natural condition of the tract sought to be reclaimed, then such reclamation may be made and the land rendered useful to all and at their joint expense. In such case the absolute right of each individual owner of land must yield to a certain extent or be modified by corresponding rights on the part of other owners for what is declared upon the whole to be for the public benefit." (p. 163).

In instances where the police power has been applied in the regulation of conduct which will necessarily affect the rights and interests of others may be multiplied without number. An extreme example is afforded by the party-wall cases, such as *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, and *Swift* v. *Calnam*, 102 Iowa 206, 71 N. W. 233, where statutes were upheld which allowed one person to build a party-wall on his neighbor's land even without the neighbor's consent.

Competitive conditions are not beyond the purview of the police power. Where economic maladjustments exist

which are of concern to the public, Congress in its sphere, and the state Legislature acting under the police power, can adopt reasonable measures for their correction. See *Pipe Line Cases*, 234 U. S. 548; *Munn* v. *Illinois*, 94 U. S. 113; *Nebbia* v. *New York*, 291 U. S. 502; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251; *Parker, Director of Agriculture, et al.* v. *Brown*, 317 U. S. 341.

Legislation which is valid under one state of facts might be entirely invalid when applied to different conditions and different facts. See *Clark* v. *Nash*, 198 U. S. 361, and *Offield* v. *New York, etc. R. Co.* 203 U. S. 372. But if the problem is sufficiently serious, if the public at large is interested in its proper solution, if private interests are so conflicting that there must be a legislative correction to prevent harmful discord, then any reasonable solution worked out by the Legislature falls well within the limits of constitutionality, and private rights must yield.

Even in cases where statutes have been enacted for the purpose of preventing waste of natural resources, the cases are uniform that where the regulatory body has assumed jurisdiction for the purpose of making rules and regulations for preventing waste, such regulatory body must, in the course of so doing, make reasonable and equitable rules and regulations for the protection and adjustment of correlative rights of all parties involved.

In the case of *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, there was involved a statute of the State of Indiana. Although the statute involved might be denominated a waste statute, it was invoked in the case involved for the sole purpose only of protecting correlative rights. The title, preamble and first section of the Act are as follows:

> "'An act concerning the sinking, safety, maintenance, use and operation of natural gas and oil

wells, prescribing penalties and declaring an emergency.

"'Whereas, great danger to life, and injury to persons and property is liable to result from the improper, unsafe and negligent sinking, maintenance, use and operation of natural gas and oil wells; therefore,

"'Section 1. Be in enacted by the General Assembly of the State of Indiana, That it shall be unlawful for any person, firm or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil from any such well to escape into the open air, without being confined within such well or proper pipes or other safe receptacle, for a longer period than two (2) days next after gas or oil shall have been struck in such well. And thereafter all such gas or oil shall be safely and securely confined in such well, pipes or other safe and proper receptacles'."

The issue in that case is stated by the court as follows:

"The issue which this record presents, on the subject of the law just referred to, is this: Did the enforcement of the first section of the statute produce as to the persons whose obedience to its commands were coerced by injunction, a taking of private property without adequate compensation; that is, did the execution of the statute amount to a denial of due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States?"

The Attorney General of the state instituted a complaint in which it was alleged that the defendant, in producing oil from one of its wells, permitted the natural gas to escape therefrom, that such escape would eventually exhaust the natural gas in the field to the damage of other

producers who desire to produce natural gas and to the damage and injury of the public in general and prayed for an injunction prohibiting, restraining and enjoining the defendant from suffering and permitting the natural gas produced from its wells to escape. A temporary injunction was issued as prayed for.

The defendant answered. The gist of its answer being to the effect that it could not produce oil from its well without permitting natural gas to escape; that if the injunction be granted it would be prevented from producing oil from its well and thereby be deprived of its property in violation of the Constitution of the United States.

The State demurred to the answer as not alleging facts sufficient to constitute a defense, the demurrer was sustained and a decree was entered granting a permanent injunction from which the appeal was taken. In passing on the proposition there involved the Supreme Court of the United States said:

> *"On the other hand, as to gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property.* But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things, as to which it can be exerted, *that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder.* Hence it is that the legislative power, from the peculiar nature of the right

and the objects upon which it is to be exerted, *can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.* This necessarily implied legislative authority is borne out by the analogy suggested by things ferae naturae, *which it is unquestioned the legislature has the authority to forbid all from taking, in order to protect them from undue destruction,* so that the right of the common owners, the public, to reduce to possession MAY be ultimately efficaciously enjoyed. Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the State of Indiana which is here attacked because it is asserted that it devested private property without due compensation, *in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others.* Indeed, the entire argument, upon which the attack on the statute must depend, involves, a dilemma, which is this: *If the right of the collective owners of the surface to take from the common fund, and thus reduce a portion of it to possession, does not create a property interest in the common fund, then the statute does not provide for the taking of private property without compensation.* If, on the other hand, there be, as a consequence of the right of the surface owners to reduce to possession, a right of property in them, in and to the substances contained in the common reservoir of supply, then as a necessary result of the right of property, its indivisible quality and the peculiar position of the things to which it relates, *there must arise the legislative power to protect the right of property from destruction.* To illustrate by another form of statement, the argument is this: There is property in the surface owners in the gas and oil held in the natural reservoir. Their right to take cannot be regulated

without devesting them of their property without adequate compensation, in violation of the Fourteenth Amendment, and this, although it be that if regulation cannot be exerted one property owner may deprive all the others of their rights, since his act in so doing will be damnum absque injuria. *This is but to say that one common owner may devest all the others of their rights without wrongdoing, but the lawmaking power cannot protect all the owners in their enjoyment without violating the Constitution of the United States.*

"These considerations are sufficient to dispose of the case. But as there are several contentions which seem to have been considered, in argument, as resting on different premises, though such in reason is not the case, we briefly notice them separately: First. It is argued that as the gas, before being allowed to disperse in the air, serves the purpose of forcing up the oil, therefore it is not wasted, hence is not subject to regulation. Second. That the answer averred that the defendant was so situated as not to be able to use or dispose of the gas which comes to the surface with the oil; from which it follows that the gas must either be stored or dispersed in the air. Now, the answer further asserted that when the gas is stored and not used the back pressure, on the best known pump, would, if not arresting its movement, at least greatly diminish its capacity. Hence it is said the law by making it unlawful to allow the gas to escape made it practically impossible to profitably extract the oil. That is, as the oil could not be taken at a profit by one who made no use of the gas, therefore he must be allowed to waste the gas into the atmosphere, and thus destroy the interest of the other common owners in the reservoir of gas. These contentions but state in a different form the matters already disposed of. They really go not to the power to make the regulations, but to their wisdom. But with the lawful discretion of the legislature of the State we may not interfere.

"In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to *take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but a regulation of real property, and they must hence be treated as relating to the preservation and protection of rights of an essentially local character.* Considering this fact and the peculiar situation of the substances, *as well as the character of the rights of the surface owners,* we cannot say that the statute amounts to a taking of private property, when it is but a regulation by the State of Indiana of a subject which especially comes within its lawful authority." (Emphasis supplied)

In the case of *Bandini Petroleum Co., et al.* v. *Superior Court, Los Angeles County, California, et al.*, 284 U . . 3, this Court had under consideration the Oil and Gas Conservation Act of California which prohibited the unreasonable waste of natural gas in oil and gas fields. The term "unreasonable waste" as construed by the Supreme Court of California, means allowing gas to come to the surface in excess of a reasonable proportion to the amount of oil produced. The statute contains the provision that "The blowing, release or escape of natural gas into the air shall be deemed prima facie evidence of unreasonable waste." Proceedings were instituted in the state court for a writ of prohibition to restrain a state court from enforcing an injunction order issued pursuant to and in the enforcement of said Oil and Gas Conservation Act. In passing on the proposition involved the Supreme Court of the United States said:

"It was with that understanding of the law of the State that the District Court of Appeal considered the statute, taken as a whole, as one regulating and adjusting the co-existing rights of the surface own-

ers in the same field, and accordingly sustained the statute as a valid exercise of state power against the contentions under the due process clause. The court said: 'It is the co-existence of these rights which authorizes the State to make use of its legislative power. When the rights of one impinge upon the rights of others the State may interpose for the purpose of adjusting and regulating the enjoyment of those rights.' The District Court of Appeal apparently thought it doubtful whether the State might restrict or regulate the production of oil or gas 'on the theory of the public's interest in their natural resources' but deemed it unnecessary to decide that question in the present case. That court explicitely refused to accept the view that the statute 'does not proceed upon the theory of correlative rights, but only upon the policy of conserving or preserving the common supply.' And, replying to the suggestion that the legislature was without authority to restrict the production of oil, the District Court of Appeal concluded its opinion with the statement that the record did not 'indicate that the temporary injunction was founded upon such a theory. Nor are we determining that the Act attempts to confer upon the court any such power. Rather we are convinced that a proper construction of the enactment confines the authority within the limits of enjoining the production of gas when in excess of the reasonable proportion to the to the oil for the particular field involved, when not conveniently necessary for other than lifting purposes.'

"While this was the basis of the decision of the District Court of Appeal, the appellants insist that, in the subsequent decisions upon the appeal from the injunction order of the Superior Court, the Supreme Court of the State has taken a broader ground and has upheld the statute as one designed to protect the public interest in the conservation of natural resources. 80 Cal. at pp. 612-614; 294 Pac. at pp. 722, 723. We do not understand, how-

ever, that the Supreme Court in taking that view denied the operation of the statute as a safeguard of the co-existing rights of surface owners. On the contrary, the Supreme Court, in its second decision affirming the injunction order of the Superior Court summed up its conclusions in these words (81 Cal. at p. 471; 297 Pac. at pp. 537, 538): 'We reiterate that the legislation in question has lawfully vested in the Superior Court the power to determine what wastage of gas in the production of oil is reasonable or unreasonable. *Whether such wastage be reasonable or unreasonable is a question of fact and should be determined in view of the necessity of one land owner to make productive use of his parcel, in view of the equal right of the adjoining owners not to be deprived of correlative production from their parcels and in view of the right of the public to prevent the waste of that which cannot be replaced.*'

"If the statute be viewed as one regulating the exercise of the correlative rights of surface owners with respect to a common source of supply of oil and gas, the conclusion that the statute is valid upon its face, that is, considered apart from any attempted application of it in administration which might violate constitutional right, is fully supported by the decisions of this Court. Ohio Oil Co. v. Indiana, 177 U. S. 190, 210, 211; Lindsley v. Natural Carbonic Gas Co., supra, at p. 77; Walls v. Midland Carbon Co., 254 U. S. 300, 323. *In that aspect, the statute unquestionably has a valid operation, and it cannot be said that the Superior Court was without jurisdiction to entertain the suit in which the injunction order was granted."* (Emphasis supplied)

Since the Oklahoma Supreme Court has so many times cited with approval the case of *Lindsley* v. *Natural Carbonic Gas Company*, 220 U. S. 61, we think it well to quote from that case. In the body of the opinion at page 73 the Supreme Court of the United States said:

"Coming to the provision in question, it is necessary to inquire what construction has been put upon it by the highest court of the state, *for that construction must be accepted by the courts of the United States and be regarded by them as a part of the provision when they are called upon to determine whether it violates any right secured by the Federal Constitution.* Weightman v. Clark, 103 U. S. 256, 260; Morley v. Lake Shore Railway Co., 146 U. S. 162, 166; Olsen v. Smith, 195 U. S. 333, 342. The Court of Appeals of the State had the statute before it in Hathorn v. Natural Carbonic Gas Co., 194 N. Y. 326, and again in People v. New York Carbonic Acid Gas Co., 196 N. Y. 421, and the elaborate opinions then rendered disclose that the court, having regard to the title of the act and to the doctrine of correlative rights in percolating waters which prevails in that State, as recognized in Forbell v. City of New York, 164 N. Y. 522, construed this provision, not as prohibiting the specified acts absolutely or unqualifiedly, *but only when the mineral waters are drawn from a source of supply not confined to the lands of the actor but extending into or through the lands of others, and then only when the draft made upon that source of supply is unreasonable or wasteful, considering that there is a coequal right in all the surface owners to draw upon it. In other words, the court, by processes of interpretation having its approval, read into the provision an exception or qualification making it inapplicable where the waters are not drawn from a common source of supply, and also where, if they be drawn from such a source, no injury is done thereby to others having a like right to resort to it.*" (Emphasis supplied)

In the case of *Champlin Refining Co.* v. *Corporation Commission of Oklahoma, et al., supra,* 286 U. S. 210, there was involved the oil proration statutes of Oklahoma. The Supreme Court of the United States said:

"In Oklahoma, as generally elsewhere, land owners do not have the absolute title to the gas and oil that may permeate below the surface. These minerals, differing from solids in place such as coal and iron, are fugacious and of uncertain movement within the limits of the pool. Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession, including that coming from land belonging to others; *but the right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the State to prevent unnecessary loss, destruction or waste. And that power extends to the taker's unreasonable and wasteful use of natural gas pressure available for lifting the oil to the surface and the unreasonable and wasteful depletion of a common supply of gas and oil to the injury of others entitled to resort to and take from the same pool.* Ohio Oil Co. v. Indiana, 177 U. S. 190. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 77; Bandini Co. v. Superior Court, 284 U. S. 8, 19 et seq.; Brown v. Spillman, 155 U. S. 665, 669; Walls v. Midland Carbon Co., 254 U. S. 300, 323; Rich v. Doneghey, 71 Okla. 204, 177 Pac. 86; People v. Associated Oil Co., 211 Cal. 93, 100 et seq., 294 Pac. 717." (Emphasis supplied)

In the case of *C. C. Julian Oil & Royalties Co.* v. *Capshaw, supra,* there was again involved the oil proration statutes of Oklahoma, and in that case the Supreme Court of Oklahoma said:

"The Legislature may also regulate and restrict the use and enjoyment of landowners of the natural resources of the state, such as subterranean waters, gas, oil and timber, *so as to protect them from waste and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibitions against the taking of property without due process of law, denial of the equal protection of the laws, or taking property without just compensation.*" (p. 844). (Emphasis supplied)

In that case Judge Albert C. Hunt, in a specially concurring opinion, said:

*"But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things are united, though separate * * * The right of the owner of property to do with it as he pleases is subject to the limitation that he must have due regard for the rights of others * * * On account of the vagrant and fugitive nature of oil in the ground it was clearly within the powers of the Legislature to protect 'the co-equal rights' of all the owners of land in a common source of supply of crude oil in order to prevent any of such owners from taking from the pool more than his fair proportionate share of the oil and gas in pool, and it could reach such end by preventing waste.*

"In 6 R. C. L. 'Constitutional Law,' section 186, it is said:

"The police power to a large extent rests on the maxim 'Sic utere tuo ut alienum non laedas,' and it is the function of the government by which this maxim is enforced. One of the objects of government is to impose that degree of restraint on individual action which is required for the reasonable enjoyment of all in their respective rights. It has been said that nearly every problem involved in the police power finds its solution in application of the principle embodied in this maxim, *that* every one must so use his own property as not to injure the rights of others, and that this principle should be observed in the exercise of the police power.'

"The last sentences of sections 7956, 7957, confer authority upon the Corporation Commission *to make rules and regulations for the prevention of the prohibited waste and to so regulate the taking of crude oil or petroleum from any or all common sources of supply within the state as to prevent the*

> *. . inequitable or unfair taking from a common source of supply of crude oil or petroleum by any person, firm or corporation.*" (p. 853) (Emphasis supplied)

In the case of *Patterson* v. *Stanolind Oil & Gas Co., et al.*, 182 Okla. 155, 77 P. (2d) 83, the Supreme Court of Oklahoma had under consideration the 1935 Oil Well Spacing Act, and had involved an order of the Corporation Commission of the State of Oklahoma establishing "The North Wellston Area" in Lincoln County. The action was brought by the plaintiff Patterson, a royalty owner, against the defendants, co-lessees, to recover $988.68 allegedly due him as his share of the proceeds from the oil produced by said lessees, by reason of his ownership of an undivided 1/16th interest in the minerals under the tract of land upon which the production was had. The particular tract of land involved was a part of an 80-acre tract. The north 25 acres and south 55 acres were separately owned and covered by separate oil and gas leases owned by the defendants. The well in question was drilled upon a 10-acre tract located in the extreme northeast corner of said 80-acre tract. Said 10-acre tract consisted of 6¼ acres in the northern portion thereof, in which tract plaintiff owned his undivided interest, and 3¾ acres in the southern portion of said 10-acre tract. The well in question was drilled in the 6¼ acres in which plaintiff owned his interest and plaintiff claimed his proportionate part of all proceeds derived from said well, contending that the southern portion of said tract was not entitled to participate. Under the Commission's well spacing order, in question, the 6¼ acres in which plaintiff owned an interest and the 3¾ acres in which he owned no interest, were included in the same well spacing unit. The well, in question, was drilled upon the 6¼-acre tract in which plaintiff owned his interest.

The Commission's order contained the following provision in regard to the disposition of royalties:

> " 'In the event a producing well, or wells, is completed upon a unit where there are two or more separately owned tracts, any royalty owner, or group of royalty owners, holding the royalty interest under a separately owned tract, shall share in one-eighth of all of the production from the well or wells drilled within the unit in the proportion that the acreage of their separately owned tract bears to the entire acreage of the unit'," (p. 87)

In passing on the proposition there involved Justice Davison, speaking for the Supreme Court of Oklahoma, said:

> *"In the present case, the defendants' compliance with the above provision allows the owners of the mineral rights in the 3¼ acres of the drilling unit to share with the plaintiff and his co-owners of the mineral rights in the other 6¼ acres of the unit, the oil and gas produced from the well on said unit, though said well is located entirely upon the surface of the 6¼ acre tract. The plaintiff contends that according to the fundamental rule of oil and gas ownership, the owner of land is entitled to all of such minerals that he is able to reduce to possession thereon and that he (plaintiff) according to said rule is entitled to the portion of all of the oil and gas produced on said 6¼ acres that is provided for in his mineral deed and the defendants' lease.* His contention is that when such portion is reduced by the distribution of this production among the owners of the adjoining 3¼ acres, he is deprived of property without due process of law, and that the same is taken for private use without just compensation, and that the contractual obligations of both the deed and the lease are thereby abrogated. (p.87)
>
> • • •
>
> "Hence, it is that the legislative power, from the peculiar nature of the right and the objects upon

which it is to be exerted, *can be manifested for the purpose of protecting all of the collective owners, by securing a JUST DISTRIBUTION to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.* (p. 88)

* * *

"Thus, in our opinion, the lawful exercise of the state's power to protect the correlative rights of owners in a common source of supply of oil and gas is not a proper subject for the invocation of the provisions of either the state or federal Constitution which prohibit the taking of property without just compensation or without due process of law and forbid the impairment of contract obligations. *As we view it the property here involved has not been taken or confiscated; its use has merely been restricted and qualified. This does not violate the due process clause of either Constitution. And this would be true even though the plaintiff were unable to prove a distinct loss to himself through the operation of the statutes putting said police power into force and effect.* (p. 89) (Emphasis supplied)

The Supreme Court of the United States in the case of *Patterson* v. *Stanolind*, 305 U. S. 376, upheld the order of the Corporation Commission which was involved in the foregoing decision, holding that, in the light of previous decisions, the plaintiff had failed to raise a substantial Federal question and dismissing the appeal for want of jurisdiction, citing: *Hannis Distilling Company* v. *Mayor and City Council of Baltimore*, 216 U. S. 288; *Levering & Garrigues Co., et al.* v. *Morrin, et al.*, 289 U. S. 103, 105, 106.

In the case of *Hunter Company, Inc.* v. *McHugh, Commissioner of Conservation, et al.*, 320 U. S. 222, this

Court had under consideration an appeal involving the construction of the Louisiana well-spacing Act. The Act, involved, provided for well spacing or drilling units and provided that when a drilling unit embraced separately owned tracts the owners might agree to pool their interests but provided that in default of such agreement, "the Commissioner shall, if found by him to be necessary for the prevention of waste *or to avoid the drilling of unnecessary wells,* require such owners to do so and to develop their lands as a drilling unit." The Act also provides "in the event such pooling is required, the cost of development and operation of the pooled unit chargeable by the operator to the other interested owner or owners shall be limited to the actual expenditures required for such purpose, not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commissioner shall determine the proper costs, after due notice to all interested parties and hearing thereon."

Pursuant to the Act the Commissioner promulgated an order which designated drilling units of 320 acres. Less than thirty days after the promulgation of this order, no application having been made by the adjacent owner to require pooling, appellant, without having designated a drilling unit or made application to the Commissioner to make an exception to the order, brought suit in the Louisiana civil district court to enjoin the enforcement of the Act and the order issued pursuant thereto. The complaint asserted the order was invalid under the State Constitution and laws, and violated the Fourteenth Amendment of the Constitution of the United States in that it made no provision for the payment to appellant of the

reasonable value of its lease and for reimbursing it for the cost of development of the gas, including the cost of drilling its well and laying its pipe line. After having determined that the case was moot because of the issuance of subsequent orders of the Commissioners, which had not been considered by the State court, this Court said:

> "In the present posture of the record, so far as the appeal seeks to bring before us for review the judgment of the state court sustaining the constitutionality of the statute, the record presents no substantial federal question. We have held that a state has constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landholders of the migratory gas and oil underlying their land, fairly distributing among them the costs of production and of the apportionment. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 77; Bandini Petroleum Co. v. Superior Court, 284 U. S. 8, 22; Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 232-4; Thompson v. Consolidated Gas Corp. 300 U. S. 55, 76-7; Patterson v. Stanolind Oil & Gas Co., 305 U. S. 376, 379, and cases cited. On this appeal, absent from the record any operative order implementing Act No. 157, we cannot say that the application of the Act can be enjoined as invalid on its face, for we cannot say that no order could be made by the Commissioner which would apportion the production and distribute the costs of production and of the apportionment in a manner which would be consonant both with the requirements of the statute and the Federal Constitution, compare Patterson v. Stanolind Oil & Gas Co., supra, with Thompson v. Consolidated Gas Corp., supra. It will be time enough to consider the constitutionality of any particular apportionment and distribution of costs when we have before us the specific provisions of an order directing them which has been subjected

to the scrutiny of the state court. See Bandini Petroleum Co. v. Superior Court, supra."

The Supreme Court of Oklahoma and this Court, have upheld orders made by the City Board of Adjustment based on police powers, which orders provide for a reasonable lease bonus for non-assenting lot owners and for participation by non-assenting lot owners in the costs of drilling, completing and producing wells for the production of oil and gas, as a prerequisite to their right to share in the production, and provide that the owner on whose property the well has been drilled shall share his one-eighth royalty with the other property owners in the drilling block, each such owner sharing in the one-eighth royalty in the ratio that the total area of his property bears to the area in the drilling block.

In the case of *Patterson* v. *Stanolind, supra,* the Supreme Court of Oklahoma and this Court have upheld an order entered by the Corporation Commission of the State of Oklahoma, pursuant to the well-spacing laws, which order required the owner of property on which the well in question had been drilled to share the one-eighth royalty from said well with other property owners in the unit, each such owner sharing in the one-eighth royalty in the ratio that the acreage of each bore to the total acreage in the drilling unit.

In the case of *Hunter* v. *McHugh, supra,* this Court has refused to say that no constitutional order could be written under the Louisiana laws requiring lease owners to share in the cost and participate in the production derived from a well drilled in a unit, created pursuant to the spacing laws of that state.

The most recent development in the realm of conservation is found in unit operation legislation under and by virtue of which provisions are made for the unitization of

an entire gas or oil field. Such legislation provides for unitization of an entire field and its management and operation by a single operator. Such legislation is much more far-reaching in so far as its effects upon property, property rights and contractual rights, are concerned. This Court has indicated in a recent case its approval of such legislation. *Burford, et al.* v. *Sun Oil Co.*, et al., 319 U. S. 315, 321, 322.

In the opinion of this case it is also said "for these and many other reasons based on geologic realities, each oil and gas field must be regulated as a unit for conservation purposes. Compare *Railroad Commission* v. *Rowan & Nichols Co.*, 311 U. S. 570, 574. The federal government, for the present at least, has chosen to leave the principal regulatory responsibility with the States, but does supplement state control. While there is no question of the constitutional power of the State to take appropriate action to protect the industry and protect the public interest, *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, the state's attempts to control the flow of oil and at the same time protect the interest of the many operators have from time to time been entangled in geological-legal problems of novel nature. Texas' interests in this matter are more than that very large one of conserving gas and oil, two of our most important natural resources. It must also weigh the impact of the industry on the whole economy of the State and must consider its revenue, much of which is drawn from taxes on the industry and from mineral lands preserved for the benefit of its education and eleemosynary institutions. To prevent 'past, present, and imminent evils' in the production of natural gas, a statute was enacted 'for the protection of public and private interests against such evils by prohibiting waste and compelling ratable produc-

tion.' The primary task of attempting adjustment of these diverse interests is delegated to the Railroad Commission, which Texas has vested with 'broad discretion' in administering the law. The Commission, in cooperation with other oil producing States, has accepted state oil production quotas and has undertaken to translate the amount to be produced for the State as a whole into a specific amount for each field and for each well. These judgments are made with due regard for the factors of full utilization of the oil supply, market demand, and protection of the individual operators, as well as protection of the public interest. As an essential aspect of the control program, the State also regulates the spacing of wells."

In the instant case none of the statutes involved were enacted for the sole purpose of preventing waste. The fact that the Supreme Court of Oklahoma did not refer to or base its decision upon certain of the statutes which we here cite, does not put aside from consideration by this Court of any or all of said statutes if they be applicable to the problems involved. *Carondelet Canal and Navigation Company* v. *State of Louisiana,* 233 U. S. 362.

As we have seen, Chap. 198, Session Laws, 1913, defined the ownership of natural gas and made provisions for the reciprocal rights and obligations of its owners. Chap. 197, Session Laws, 1915, was enacted for the purpose of protecting correlative rights as well as of preventing waste, authorized and directed the Commission to make reasonable rules and regulations not only for prevention of waste, but also for the protection of correlative rights of all persons entitled to produce natural gas. In the instant case, as reflected by its basic orders, the Commission has assumed jurisdiction in the gas field involved for the twofold purpose of preventing waste and protecting correlative rights. It has made findings in its basic orders that for

the two fold purpose of preventing waste and protecting correlative rights, a system of even withdrawals of natural gas is necessary. In making provision therefor it has provided that drainage units in the field shall consist of a section of land, as in the case of Section 14, in which the Peerless well has been drilled. Having found that even withdrawals must be maintained in order to prevent waste and protect correlative rights, the order involved herein was clearly a necessary adjunct to the general plan laid down in the basic orders of the Commission.

However, as evidence of the continuing purpose of the Oklahoma Legislature to provide that the protection of correlative rights alone are sufficient to justify action by the Commission, we refer to the well spacing Act of 1935, considered in the case of *Patterson* v. *Stanolind*, *supra*, as amended by laws of 1945, which provide that "whenever the production from any common source of supply of oil or natural gas in this State can be obtained only under conditions constituting waste or drainage not compensated by counter-drainage, then any person having the right to drill into and produce from such common source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

"(a) To prevent and to assist in preventing the various types of waste prohibited by this Act, or any of said wastes, and to protect or assist in protecting the correlative

rights of interested parties, the Commission, by orders, rules, and regulations made in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape for any common source of supply or prospective common source of supply in this State." (Session Laws, 1945, Title 52, sec. 4).

It was pursuant to the foregoing statute that the Commission's basic order No. 17,867 (Appendix H) was entered and orders such as involved herein are necessary adjuncts in effectuating the purposes of the basic order. Said statute recognizes and provides that the jurisdiction of the Commission may be invoked either (1) for the prevention of waste, or (2) for the protection of correlative rights. The well spacing statutes of Oklahoma were again amended by the laws of 1947, which provide; among other things, "Whenever the production from any common source of supply of oil or natural gas in this State can be obtained only under conditions constituting waste *or drainage not compensated by counter-drainage*, then any person having the right to drill into and produce from such common source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

"(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any

of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma."

It is thus seen that the Legislature of Oklahoma has continually and repeatedly recognized that the protection of correlative rights in the production of oil and gas is of equal importance with the prevention of waste.

In considering the statutes involved due and proper consideration should be given to the conditions involved. Natural gas is much more fugacious than oil; it cannot be stored; it cannot be transported except through pipe lines. There are few pipe line outlets in the particular field involved, yet there are many separate lease owners and, according to the evidence, more than five thousand sections of land in productive parts of the particular field involved. The conservation of natural gas and the protection of the rights of all the various owners involved are of equal importance in determining whether or not the Legislature had the power to enact and the Commission the power to enter the order which is involved herein. Either was sufficient to invoke the action of the legislature and the Commission.

The Oklahoma Legislature and the Corporation Commission have been pioneers in the field of conservation, and in the protection of correlative rights, as will appear from the decisions of this Court. The order involved was entered by the Commission after careful consideration and

we believe this Court will follow the rule which it has heretofore laid down and will not substitute its judgment for that of the Commission. *Gant* v. *City of Oklahoma City*, 289 U. S. 98; *Stanolind Oil Co.* v. *Marysville*, 279 U. S. 582; *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Co.*, 311 U. S. 570, 577.

There are two alternatives in the Commission's order. Republic may make a connection to the Peerless well or it may shut down its wells.

If Republic does not desire to take gas from Peerless it may shut down its wells. Counsel for Republic, in the trial of the case, admitted without qualification that the Commission could shut down the wells of Republic, in order to prevent drainage (R. 51). Republic admits in its brief that wells may be shut down for the purpose of preventing waste but not for the protection of correlative rights, (P. 21). On this point we submit that under the decision of this Court in the *Ohio* v. *Indiana, supra*, the State's prerogative to shut down producing wells was invoked for the sole purpose of protecting correlative rights and that decision is, therefore, an unequivocal answer to the contention that the wells of Republic may not be shut down in order to protect correlative rights of Peerless. The Oklahoma Commission can act either to prevent waste or to protect correlative rights.

The other alternative is that Republic may make connection to the Peerless wells on such terms and conditions as may be agreed upon between the parties and if the parties cannot agree upon such terms and conditions as may be prescribed by the Commission. In considering this provision of the order the Supreme Court of Oklahoma held that Republic was not thereby required to purchase gas from Peerless; that Republic was given a choice

between taking gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or of shutting in its own production from the common source of supply. It was left free to choose either of these three methods of correcting the inequality in taking and the consequent infringement of the correlative rights of Peerless.

Certainly, if the Board of Adjustment of the City of Oklahoma City can make reasonable and constitutional orders providing for the sale by non-assenting lot owners, of leases covering their property and fixing the bonus therefore, or of participating in production by sharing in the costs thereof, the Corporation Commission of the State of Oklahoma is capable of issuing a reasonable and constitutional order which would provide for reasonable contribution by Peerless to the cost of transporting the gas involved.

If the Corporation Commission of the State of Oklahoma can make an order requiring the owner of property on which a well has been drilled, within a drilling unit, to share his one-eighth royalty with other owners of property in the drilling unit, then the Commission can make a reasonable and valid order providing that Republic shall share its gathering facilities with Peerless and that Peerless shall contribute its fair and proportionate share to the cost of transporting its natural gas to market, not the market of Republic but a public market afforded by admittedly common purchasers.

If the Commissioner of Conservation of Louisiana can make a reasonable and constitutional order providing that lease owners or property owners within a drilling unit must pool their interests and share in the cost of drilling, completing and producing a well to be drilled in return

for a share in the profits to be derived from the production, such an order as involved herein can be reasonable and constitutional.

We see no reason why pipe lines are more sacred or less subject to the police powers of the State than is the oil and gas which belongs to the humblest farmer in the State of Oklahoma. If the oil and gas and rights with reference thereto of private and corporate owners are subject to the police powers of the State, then we say that pipe lines are and should be subject to the same laws and to the same extent for the same purposes.

Republic contends that the order is a burden on interstate commerce. The Supreme Court of Oklahoma has clearly demonstrated this is not true and recent decisions of this Court, we think, are conclusive that the operations involved are within the peculiar province of the State.

Republic contends that the Act or Acts involved and the order involved herein deny to Republic the equal protection of the laws. Each and all of the statutes involved, which are set out in full in the appendices of this brief, apply alike to individuals, partnerships, associations and corporations, foreign and domestic; all are required to accept the statutes involved before engaging in the business of transporting natural gas for compensation, hire or otherwise, and all are subject alike to each and all of the provisions of the statutes. There is plainly no denial of equal protection.

Republic also contends that its property will be taken and its contractual rights abrogated by the order involved. We have demonstrated by many decisions that property may be taken, when necessary, under the police powers of the State. However, we see no reason why the Commission's

order involves a taking of Republic's property. The most that could be said in this connection is that the order of the Commission constitutes *a limitation on the use of Republic's property,* in the language of the Supreme Court of Oklahoma, in the case of *Patterson* v. *Stanolind, supra.* In any event, we must assume that Republic will be properly compensated for whatever limitation is made upon the use by Republic of its property, in whatever order the Commission may hereafter make fixing the terms and conditions of the taking by Republic of the natural gas of Peerless.

Certainly Peerless does not contend it should be accorded any right unless it renders just compensation therefor. The entire controversy narrows itself down to the question of whether just regulations and orders may be entered for the purpose of protecting the correlative rights of all parties owning and having the right to produce natural gas in the field involved, or shall the law of the jungle prevail and the strong, equipped with pipe line facilities, be licensed to take the natural gas which, under the laws of the State of Oklahoma, belongs to others.

It seems to us that Republic is in poor position to complain about its property being taken when the record is without dispute that it is in fact the property of Peerless which is being taken by Republic and which Republic will continue to take unless the order of the Commission involved herein is permitted to stand. Not only are the rights of Peerless involved but the rights of each of the more than five thousand owners of property in the Guymon-Hugoton Field are involved and bound up in the final decision of this case.

Republic relies on the case of *Texhoma Natural Gas Co.* v. *Railroad Commissioner,* 59 F. (2d) 750. We have

already demonstrated that the later decision of this Court in the case of *Thompson* v. *Consolidated Gas Utilities Co., supra,* supports our position and is contrary to the position taken by Republic in this case. The *Texhoma* case must therefore give way to the opinion of this Court in the *Thompson* case. In any event, however, the *Texhoma* case is distinguishable from the instant case in the following particulars: (1) It involved contractual and property rights which had become fixed before the statute involved was enacted, whereas in the instant case the statutes involved were enacted prior to the time that any of the property or property rights involved were acquired and prior to the execution of any of the contracts involved. (2) There was in the *Texhoma* case on evidence that the order was necessary to presently protect any property owners from unnecessary drainage to the reserves of others. (3) The law of capture prevailed in Texas but does not in Oklahoma.

In a later case, *Henderson* v. *Terrell,* 24 F. Supp. 147, a three-judge Court composed of Hutchinson, Circuit Judge, and McMillan and West, district judges, passed upon a subsequently enacted statute of the State of Texas and, in passing upon a situation similar to that which we have in the instant case, upheld an order the effect of which is the same as that which is involved herein.

A still later case decided by the Supreme Court of Texas, *Corzelius* v. *Harrell,* 186 S. W. (2d) 961, also supports the position of Peerless in the instant case.

The attitude of Republic in its opposition to regulation of any kind is apparent throughout the entire record of this case; while not admitting it is a natural gas company, it contends that if it is such all of its operations are regulated under the Natural Gas Act (R. 77). For obvious reasons Republic has always sought to avoid classification

as common purchaser or as common carrier of natural gas, or as a natural gas company (R. 39). Republic contends that it is not a common carrier and a common purchaser and is not subject to regulation by the Corporation Commission of the State of Oklahoma, but if it is a common carrier and a common purchaser, it is not subject to regulation by the Corporation Commission but is subject to regulation by the Federal Power Commission (R. 40, 41). In regard to the Benedum Trees transaction, Republic spent a period of more than a year in negotiation to insure if possible that it would not be subject to the Natural Gas Act (R. 240-303 inc.). In other words, Republic does not desire to be regulated either by the Corporation Commission of the State of Oklahoma or by the Federal Power Commission.

We believe that Republic should be subject to regulation by the State with reference to those of its operations which are within the peculiar province and exclusive jurisdiction of the State. This Court has many times so held.

CONCLUSION

We respectfully conclude that Republic entered the State subsequent to the enactment of all the statutes involved, acquired its properties and made its contracts pursuant thereto, has accepted the statutes, sought and obtained benefits thereof, and should be estopped to deny their validity; that the order involves purely property and property rights, which are within the exclusive jurisdiction of the State and not subject to interference by any other sovereign; that Republic is a common carrier and a common purchaser and should be required to take natural gas

from Peerless and that aside from all other considerations, the order involved is and constitutes a valid exercise of the police power of the State for the protection of property rights and correlative rights of the owners thereof and should not be by this Court set aside.

Respectfully submitted,

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APPENDIX

APPENDIX "A"

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9	83-113	296A
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12	146-7-8	Omitted from record
13 (Same as 50)	175-224	297
14	141-142-156-158	304A
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(Consisting of 5 letters:		
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(2)	dated Nov. 24, 1942, R. J. Wallace to Thornton Davis Peerless	216
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(4)	dated Nov. 28 from Alfred Hurlburt to Thornton M. Davis Peerless Oil & Gas Co.	217
(5)	dated Nov. 30, 1942, Vernon F. Taylor to Alfred Hurlburt	218
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APPENDIX "B"

The Revised Laws of 1910, as amended by the Laws of 1929, Chapter 44, page 56, deals with pipelines and pipeline companies: (Title 52, O.S. 1941, Sec. 1-10.)

"Any firm, co-partnership, association, or combination of individuals may become a body corporate under the laws of this state for the purpose of producing, transmitting, or transporting natural gas to points within or without this state by complying with the general corporation laws of the State of Oklahoma. (R.L. 1910, Sec. 4290; Laws 1929, Ch. 44, p. 56, § 1.)

"Foreign corporations formed for the purpose of, or engaged in the business of transporting or transmitting natural gas by means of pipelines, shall be licensed and permitted to conduct such business within this state by complying with the general corporation laws of the State of Oklahoma, and with the provisions of this article. (R.L. 1910, Sec. 4292; Laws 1929, Ch. 44, p. 56, § 2.)

"No association, combination, co-partnership or corporation shall have or exercise the right of eminent domain within this State for the purpose of constructing or maintaining a gas pipe line within this State, or shall be permitted to take private or public property for their use within this State, unless expressly granted such power in accordance with this Article. (R.L. 1910, Sec. 4293.)

"The laying, constructing, building and maintaining a gas pipe line for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets, or alleys in this State, or of any county, city, municipal corporation or any other private or public premises within this State is hereby declared

an additional burden upon said highway, bridge, road, street or alley, and any other private, or public premises and may only be done when the right is granted by express charter from the State; and such gas pipe line shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law. (R.L. 1910, Sec. 4294.)

"All pipe lines for the transportation or transmission of natural gas in this State shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mine inspector for such duty, and the expense of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas. (R.L. 1910, sec. 4295.)

"No pipe lines for the transportation or transmission of natural gas shall be laid upon private or public property when the purpose of such line is to transport or transmit gas for sale to the public until the same is properly inspected as provided in this Article, and before any gas pipe line company shall furnish or sell gas to the public, it shall secure from the inspector a certificate showing that said line is laid and constructed in accordance with this Article, and under the inspection of the proper officer: provided, that nothing in this Article shall be construed to prevent persons drilling for oil and gas from laying surface lines to transport or transmit gas to wells which are being drilled within this State: Provided, Further, that factories in this State may transport or transmit gas through pipe lines for their own use for factories located wholly within this State, upon securing the right of way from the State over or along the highways and from property owners to their lands. (R.L. 1910, sec. 4299.)

"No person, firm or association or corporation shall ever be permitted to transmit or transport

natural gas by pipe lines in this State or in this State construct or operate a pipe line for the transmission of natural gas, except such persons, firms, associations, or corporations be incorporated as in this Article, provided, except as provided in the preceding section. (R.L. 1910, sec. 4300.)

"Before any gas pipe line corporation shall acquire any right of way, or exercise the right of eminent domain within this State, or construct any pipe lines for the transportation of gas, it shall file in the office of the Corporation Commission a plat showing in detail the points in this State between which, and the route along which its trunk line is proposed to be constructed, the intended size and capacity, thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections of all kinds on said trunk lines; and upon the demand of the corporation commission, it shall file a plat showing, in detail all the lines owned or operated by it, with full information as to their capacity and size, location and capacity of its pumping station, gate valves, check valves and connections of all kinds in existence. (R.L. 1910, § 4301.)

"All domestic gas pipe line corporations in this State are hereby authorized to build and operate, and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this State wherever the same may be necessary, due consideration being had for the size, capacity, pressure, facilities and powers of all other gas pipe line corporations and gas consumers and gas producers, in the same gas district which may be affected by the use of said pumps. (R.L. 1910, § 4302.)

"Every gas pipe line corporation or individual in this state is hereby given authority to build, construct and maintain gas pipe lines, over, under, across or through all highways, bridges, streets, or

alleys in this State, or any public place therein, under the supervision of the inspector of oil and gas as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid, subject to the control of the local municipalities as to how the business of distribution in that municipality shall be conducted, and subject to responsibilities as otherwise provided by law; provided, however, that whenever any gas pipe line crosses the land or premises of any one outside of a municipality, said corporation shall, by request of the owner of said premises, connect said premises with a pipe line and furnish gas to said consumer at the same rate as charged in the nearest city or town. (R.L. 1910, § 4303, Laws 1929, ch. 44, p. 56 § 3.)"

APPENDIX "C"

Next in chronological order in Chapter 99, Session Laws 1913, page 166, which provides as follows:

"Chapter 99

"NATURAL GAS—REGULATION OF PRODUCTION AND TRANSPORTATION

"House Bill No. 723

"AN ACT to regulate corporations, associations, and persons engaged in this state, in the business of carrying natural gas through pipe lines; to regulate operators of gas wells, regulating the purchase of natural gas by pipe lines, providing punishment for violations thereof, conferring jurisdictions in the Corporation Commission for enforcement of the provisions of this act, and declaring an emergency. BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"Businesses and persons subject to the act—vested rights excepted.

"Section 1. Every corporation, joint stock company, limited co-partnership, partnership or other person, now, or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying, selling in or transporting natural gas within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use

in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within the state, or to have or possess the right of eminent domain, or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested and incapable of revocation by any law of this state or of the United States: (Title 52, Sec. 21, O. S. 1941.)

"Pipe line right-of-way—eminent domain—highways.

"Section 2. For the purpose of acquiring necessary right-of-way, every such person is hereby granted the right of condemnation by eminent domain, and in the use of the highways in this state, for the purpose of transporting natural gas by pipe lines, and the location, laying, constructing, maintaining and operations thereof. (Title 52, Sec. 22, O. S. 1941.)

"Pipe line operators common purchasers—requirements—exemptions.

"Section 3. Every corporation, joint stock company, limited co-partnership, partnership or other person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines, for hire, compensation, or otherwise, within the limits of this state, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, which is now engaged or hereafter shall engage in the business of purchasing natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in

favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly in whole or in part, and its own production shall be treated as that of any other person or producer. All persons, firms, associations, and corporation are exempted from the provisions of this act, except from the provisions of section (9) nine hereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, and for this purpose the district courts of the state and the Corporation Commission are hereby vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, and provided by the laws now in force in this state regulating the purchase and transporta- of oil. Sec. 23, O. S. 1941, Title 52.

"Pipe line operators to be common carriers—obligations—exemptions.

"Section 4. *Every corporation, joint stock company, limited co-partnership, partnership or other person now or hereafter engaged in the business of carrying or transporting natural gas for hire, for compensation or otherwise, by pipe line or pipe lines,* within this state, and by virtue of and in conformity to, any valid law incapable of revocation by any law of this state or of the United States, or

by virtue of and in conformity to the provisions of this act, *shall be a common carrier thereof as at common law*, and no such common carrier shall allow or be guilty of any unjust or any unlawful discrimination, directly or indirectly, in favor of the carriage, transportation or delivery of any natural gas, offered to it, in its possession or control, or in which it may be interested, directly or indirectly. Provided, that any municipality now owning or operating a gas pipe line for the purpose of furnishing gas for said municipality and now under contract with any person, firm or corporation to furnish it gas, shall be exempted from the provisions of this section during the life of said contract, or until changed or abrogated by the parties thereto. And, provided further, that any person, firm or corporation owning or operating a gas pipe line within the limits of any incorporated city or town in this state shall be exempted from the provisions of this section only as to its distributing lines located wholly within the corporate limits of said city or town. (Sec. 24, Title 52.)

"Non-compliance with act made unlawful—effect.

"Section 5. *It shall be unlawful for any corporation, joint stock company, limited co-partnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire or compensation or otherwise, within the limits of this act and not becoming a common purchaser as defined by, and accepting the provisions of this act, to own or operate, directly or indirectly any gas well or wells, gas leases, or gas holdings or interests in this state, after six months next after the approval of this act, and each and every of said corporations, joint stock company, limited co-partnership, partnership or other persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly,*

in gas well or wells, gas leases or gas holdings or interest in this state. (Sec. 25, Title 52.)

"Prerequisite to carrying gas—records for Corporation Commission.

"Section 6. Before any corporation, joint stock company, limited co-partnership, partnership or other persons shall have, possess, enjoy or exercise the right of eminent domain right-of-way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this act, or shall have, possess, enjoy or exercise any right (the word 'right' in this connection being used in its most comprehensive legal sense) conferred by this act, every such corporation, joint stock company, limited co-partnership, partnership or other person, shall file in the office of said Corporation Commission proper and explicit authorized acceptance of the provisions of this act and the Constitution of this state, in cases of pipe lines a plat showing in detail the points within this state between which, and the route along which the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk or lines; and upon demand of the Corporation Commission the proper party or parties, as required by said commission, shall properly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gate valves, check valves and connections of all kinds, respectively, required or used in the operation thereof. (Sec. 26, Title 52.)

"Right-of-way—highways—eminent domain.

"Section 7. Every domestic pipe line company in this state is hereby given authority to build,

construct, lay, and maintain gas pipe lines, over, under, across or through all highways, bridges, streets or alleys in this state or any public place under the supervision of the Corporation Commission as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid. Provided the right to lay gas pipe lines in cities shall be acquired as now provided by law, and subject to the responsibility as otherwise provided by law for any negligent injury thereby caused. All persons, natural or artificial, except foreign corporations, shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this act and the rights thereby conferred. Foreign corporations organized under the laws of any other state or territory, or the United States, and doing or proposing to do business in this state, and which shall have become a body corporate pursuant to or in accordance with the laws of this state, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits of this act provided. (Sec. 27, Title 52.)

"Filing records with Corporation Commission—extension of time.

"Section 8. Upon a sworn statement of the necessities which would justify a judicial continuance, the Corporation Commission is authorized to extend the time for the filing of the said plats, not, however, to exceed 60 days. (Sec. 28, Title 52.)

"Only 25 per cent of capacity of gas wells to be taken.

"Section 9. Every corporation, joint stock company, limited co-partnership, partnership or other person now or hereafter claiming or exercising the right to produce natural gas, or to carry or to transport natural gas through pipe line or pipe lines, for hire, compensation, or otherwise within the limits of this state, is allowed by, and upon compliance

with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, is hereby prohibited from taking more than twenty-five (25) per cent of the daily natural flow of any gas well or wells unless for good cause shown, under the exigencies of the particular case the Corporation Commission shall establish a different per centum under the prescribed rules and regulations therefor. (Sec. 29, Title 52.)

"Meters—requirements.

"Section 10. No corporation, joint stock company, limited co-partnership, partnership or person doing business under the provisions of this act shall purchase, collect, transport, convey or sell any gas from any wells in this state except such gas as is run through properly constructed meters, the daily readings of which shall be carefully and accurately taken every twenty-four hours (24), and of which a true and correct report under oath shall be made every month and which report of all such business transacted during the next preceding month shall be filed not later than the fifteenth (15th) day of each and every month with the Corporation Commission and which report shall at all times be open to the inspection of the public. Such report shall be based upon such daily meter readings; shall show the amount of gas run or purchased from each tract of lands; lease or leasehold estate, the names of the seller or sellers of such gas and of the purchaser or purchasers thereof; and any person or persons making or directing, counselling, advising, aiding or abeting in the making or filing of any false report in the premises shall be deemed guilty of perjury, and on conviction thereof be punished as provided by law; and to the end that such meters shall be properly constructed, maintained, repaired and operated, their installation, use and operation shall at all times be subject to such rules and regulations as the Corporation Commission may prescribe. (Sec. 30, Title 52.)

"Violation of act—punishment.

"Section 11. Any person, co-partnership or corporation, its agent or employees, violating any of the provisions of this act, or any order of a court of competent jurisdiction of this state, or the Corporation Commission, pursuant to the jurisdiction conferred by this act, shall, upon conviction thereof, be fined a sum of not less than one thousand dollars ($1,000.00), nor more than five thousand dollars ($5,000.00), or imprisonment not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this act; but in case the monthly runs or takings or transportation of gas shall average so as to be without discrimination, as herein provided, a transaction or transactions of any particular day or week or portion of a month shall be disregarded; and the court of competent jurisdiction of the county in which the omission or commission, which is in violation of this act, has occurred, shall have jurisdiction of an action under the Penal Code for the punishment thereof; and that said penalties shall not be exclusive of civil liability. (Sec. 31, Title 52.)

"Violations—receivership—procedure.

"Section 12. The Corporation Commission shall, upon being reasonably satisfied that any corporation has violated the provisions of this act, recommend to the Attorney General that a receiver be appointed for such corporation. Upon receipt of the recommendation by the Attorney General, he shall within ten days file a petition on behalf of the state in any court of competent jurisdiction, praying that a receiver be appointed, and such court shall immediately consider the application and appoint a receiver, if in the judgment of the court the provisions of this act have been willfully violated. The receiver, when appointed, shall immediately take charge of all the business, property and assets of such corporation in the state, and shall retain possession thereof

until it shall be determined upon the trial whether or not such corporation has violated the provisions of this act, then, in addition to the other penalties herein provided, all the property of said corporation shall be retained under such receivership until the penalties incurred hereunder are paid, after which the receivership may be discharged upon such terms and conditions as the court may impose as an assurance for the further compliance with this act. (Sec. 32, Title 52.)

"Evidence—reports of gas companies.

"Section 13. A properly certified transcript of the report of any such corporation, association, or person, shall, as against the makers thereof, be prima facie evidence of the truth of any matter therein contained. (Sec. 33, Title 52.)

"Enforcement by Corporation Commission—appeals.

"Section 14. The Corporation Commission is hereby authorized and empowered to enforce all the provisions of this act, including the employment of requisite help and gas experts to carry out the same, except where jurisdiction is conferred on some other branch of the state government by the Constitution of this state; appeals may be allowed from the decision of the Commission to the Supreme Court as now provided by law for appeals in other cases. (Sec. 34, Title 52.)

"Extension of time for operation of act.

"Section 15. For good cause shown, the Corporation Commission is authorized to extend the time within which this act shall operate as to any particular corporation, association or person not to exceed nine months after the same became effective. (Sec. 35, Title 52.)

"Emergency.

"Section 16. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall be in force and effect from and after its passage and approval.

"Approved March 26, 1913."

APPENDIX "D"

Chapter 198, Session Laws of 1913, has reference to natural gas and deals primarily with ownership of natural gas and ratable taking thereof. This act deals primarily with the prevention of drainage. It is as follows:

"Chapter 198

"NATURAL GAS—OWNERSHIP DEFINED AND OUTPUT RESTRICTED

"Senate Bill No. 130.

"AN ACT defining ownership of natural gas, providing for the taking of same and making it la - ceny to take natural gas except as herein provided.

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"Ownership defined.

"Section 1. All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state. Sec. 231, Title 52, O. S. 1941.

"Rights of owners—restrictions on output.

"Section 2. Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow

to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well. Sec. 232, Title 52, O. S. 1941.

"Purchasers of output—prices and amounts of gas to be taken.

"Section 3. Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in such gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. Sec. 233, Title 52, O. S. 1941.

"Taking more than share of gas—damages and penalties.

"Section 4. Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars ($500.00), and each day such violation is continued shall be a separate offense. Sec. 234, Title 52, O. S. 1941.

"Violations of act—puniishment.

"Section 5. Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent, or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years. Sec. 235, Title 52, O. S. 1941.

"Approved May 16, 1913."

APPENDIX "E"

The next statute, having reference to natural gas, is hapter 197, page 398, Session Laws of 1915. This act als primarily with waste or the prevention thereof rough conservation measures. This act is as follows:

"Chapter 197

NATURAL GAS—WASTE

"AN ACT to conserve natural gas in the state of Oklahoma, to prevent waste thereof, providing for the equitable taking and purchase of same, conferring authority on the Corporation Commission, prescribing a penalty for violation of this act, repealing certain acts, and declaring an emergency.

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"Waste Prohibited.

"Section 1. That the production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful. Sec. 236, Title 52, O. S. 1941.

"Waste defined.

"Section 2. That the term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas. Section 237, Title 52, O. S. 1941.

"Conservation of Gas.

"Section 3. That whenever natural gas in commercial quantities, or a gas bearing stratum, known

to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this act; and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days. Sec. 238, Title 52, O. S. 1941.

"Excess Gas Supply—Apportionment.

"Section 4. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. *The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of*

natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Sec. 239, Title 52, O. S. 1941.

" 'Common Purchaser'—Fair Treatment.

"Section 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another, save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. Sec. 240, Title 52, O. S. 1941.

"Hearings before Corporation Commission—How Conducted.

"Section 6. That any person, firm or corporation, or the Attorney General, on behalf of this state may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act; and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearings shall be had and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the state, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction, said commission is authorized to summon witnesses, make ancillary order, and use such mesne and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporation as now provided by law. Sec. 241, Title 52, O. S. 1941.

"Appeals to Supreme Court.

"Section 7. That appellate jurisdiction is hereby conferred upon the Supreme Court of this state to review the orders of said commission made under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from, may be superseded by the commission or by the Supreme Court upon such terms and conditions as may be just and equitable. Sec. 242, Title 52, O. S. 1941.

"Power of Corporation Commission—Rules and Regulations.

"Section 8. That the Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act. Sec. 243, Title 52, O.S. 1941.

"Acceptance by Pipe Lines.

"Section 9. *Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipment belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act.* Sec. 244, Title 52, O. S. 1941.

"Duties of Mine Inspector Unchanged.

"Section 10. That nothing contained in this act shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the state or his deputies. Sec. 245, Title 52, O. S. 1941.

"Validity of Several Sections of Act Independent.

"Section 11. That the invalidity of any section, subdivision, clause, or sentence of this act shall not in any manner affect the validity of the remaining portion thereof. Sec. 245, Title 52, O. S. 1941.

"Penalties for Violation.

"Section 12. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment, Sec. 246, Title 52, O. S. 1941.

"Emergency.

"Section 13. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in force from and after its passage and approval.

APPENDIX "F"

Chapter 93, Session Laws of 1913, now carried as Section 151 to 155, inclusive, of Title 17, O. S. 1941, is as follows:

"Section 151. Public Utility — Definition— Washington County, Special Provisions Relating To

"The term 'Public Utility' as used in this Act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except as hereinafter provided, and except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, direct or indirectly, for public use, or may supply any commodity to be furnished to the public.

"(a) For the conveyance of gas by pipe line.

"(b) For the production, transmission, delivery or furnishing of heat or light with gas.

"(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

"(d) For the transportation, delivery or furnishing of water for domestic purposes or for power. The term 'Commission' shall be taken to mean Corporation Commission of Oklahoma.

"Provided, that, in Washington County, where any corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, is engaged in the private business of manufactoring any product other than those hereinbefore defined, and in the manufacture of such products operate and maintain private electric or water plants for its own power and electrical energy

or water used in its manufacturing plant, without the right to eminent domain and without the use of streets, highways or public property, it may contract upon terms and prices approved by Corporation Commission the sale of a bona fide surplus of electrical energy or water developed in such private plants to any public utility engaged in manufacturing and distributing electrical energy in Washington County, Oklahoma, without becoming a public utility. Provided, the purpose of this Act is in no way to affect the general application of Section 3462 of Compiled Oklahoma Statutes, 1921, to other than Washington County; and in case this Act shall be held to be unconstitutional by the Supreme Court then it is the declared intention of this Act to in no wise affect said Section 3462. (Laws 1913, ch. 93, p. 150, sec. 1; Laws 1929, ch. 353, p. 487, sec. 1.)

"Section 152. Commission's jurisdiction over public utilities.

"The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plans, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this state, and with the orders of the Commission. (Laws 1913, ch. 93, p. 150, sec. 2.)

"Section 153. Implied and incidental powers of Commission—Contempt.

"In addition to the powers enumerated, specified, mentioned, or indicated in this act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned, or indicated, and to punish as for contempt such corporation, association, company or individual, their trustees, lessees, receivers, successors and assigns, for the disobedience of its orders in the manner provided for punishment of transportation and transmission companies, by the Constitution and laws of this state. (Laws 1913, ch. 93, p. 151, sec. 3.)

"Section 154. Records of public utility business.

"In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility, the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained. (Laws 1913, ch. 93, p. 151, sec. 4.)

"Section 155. Orders and rules of Commission—Scope—Right of Appeal.

"The Commission may, from time to time, adopt or promulgate, such orders, rules, regulations or requirements, relative to investigations, inspections, tests, audits, and valuations of the plants and properties relative to inspection and tests of meters as in its judgment may be necessary and proper; provided, that under the provisions of this act, any public utility, corporation, association, company, individual, their trustees, lessees or receivers, successors or assigns, may appeal from any order or

finding or judgment of the Corporation Commission as provided by law in cases tried and heard before said Commission of transportation and transmission companies. (Laws 1913, ch. 93, p. 152, sec. 5.)

APPENDIX "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF WALKER T. POUND, CONSERVATION OFFICER, FOR RULES AND REGULATIONS GOVERNING THE RATABLE TAKING OF GAS AND ALLOCATING THE PRODUCTION IN THE HUGOTON GAS FIELD IN TEXAS COUNTY, OKLAHOMA	CAUSE CD No. 861 ORDER No. 17410

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, originally on the 1st day of October, 1943, at 10 o'clock, A.M., upon the application filed by the Conservation Officer and pursuant to an order of the Commission setting the same for hearing and notice published as required by law; at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers, and purchasers of gas, and others interested in the Hugoton Gas Field, were present; whereupon evidence was presented, which the Commission considered as supplementary to evidence introduced in the various hearings in Cause CD No. 817 pursuant to which Order No. 16377 was issued on the 5th day of May, 1943; and the

Commission closed the cause and took the matter under advisement.

Thereafter this cause was reopened upon an amended application filed by the Conservation Officer, and pursuant to an order of the Commission setting the same for hearing and notice published according to law, came on for hearing before the Commission on the 27th day of July, 1944, at 1:30 o'clock, P.M., at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers, and purchasers of gas appeared, and others interested in the Hugoton Field were present, whereupon additional testimony was heard, and all of the testimony introduced in the hearings heretofore held was taken into consideration; and the Commission closed the cause and again took the matter under advisement.

Now, on this 27th day of December, 1944, the Commission, having considered all of the testimony taken in all of the hearings on the Hugoton Field, and being otherwise fully advised in the premises, finds as follows.

FINDINGS

1. That notice by publication of the filing of the amended application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That heretofore and on the 5th day of May, 1943, the Commission promulgated its Order No. 16377 in Cause

CD No. 817, establishing rules and regulations governing the production of natural gas in the Hugoton Field in order to prevent waste, provide for ratable taking, and fixing allowables of wells so that production and distribution in said field would be fair and equitable; that said Order No. 16377 should be rescinded and superseded by this order.

3. That there exists in Texas County, Oklahoma, a large gas field known as the Hugoton Field, which extends from the Kansas line on the north to the Texas line on the south, and approximately forty miles east and west; that said field extends north into the State of Kansas, and at least a short distance south into the State of Texas; that the probable productive area in said field in the State of Oklahoma covers most of Texas County, but the exact boundaries and extent thereof cannot be determined with certainty until additional wells are drilled.

4. That the first gas well in said area was drilled in 1922, but development of the field has been very slow owing to lack of market until about the time of the issuance of said Order No. 16377; that at said time only 55 wells had been drilled, many of which had no pipeline connection or other market outlet, and had never sold any gas; that at the present time there are more than 100 wells which are principally owned by the following companies: Republic Natural Gas Company, Cities Service Gas Company, Wilcox Oil & Gas Company, Cabot Carbon Companies, Peerless Oil and Gas Company, Southwestern Public Service Company, Hagy, Harrington and Marsh, Allison and Sturdevant, Home Development Company, and Phillips Petroleum Company, and perhaps others; that Skelly Oil Company and the Panhandle Eastern Pipe Line Company as well as all the other companies above named

and perhaps others all own large undeveloped acreage in said field; that many wells are being drilled in the field; that some of the wells have not yet had a pipeline connection and have never sold any gas up to this time; that some of said wells are supplying gas to the General Atlas Carbon Company and Cabot Carbon Company for use in the manufacture of a product commonly called furnace carbon black, and to supply the city of Guymon and other small municipalities in that vicinity; that a small part of the gas is being taken by the Panhandle Eastern Pipe Line Company and shipped to markets outside of the State of Oklahoma; that Cities Service Gas Company has a large pipeline extending from the field to Blackwell, Oklahoma, where it connects with other pipelines belonging to it and distributes gas in Oklahoma and outside of the State; that Republic Natural Gas Company is producing gas from its wells and transporting the same by its pipeline to a common point near Hugoton, Kansas, where it is sold to the Northern Natural Gas Company and shipped to consumers principally in the States of Iowa and Minnesota, and said Republic Natural Gas Company is also selling gas to Cities Service and has a connection to its pipeline.

5. That there appears to be no uniform price for gas in said area; that some of the purchasers were paying two cents at the time of the original hearing in this cause and there is no evidence to show that this price has been changed; that other companies, such as Republic Natural Gas Company, are paying on the basis of five cents per thousand cubic feet at the well to the royalty owners, and Republic is selling its gas under a contract with Northern Natural Gas Company in Kansas at six cents per thousands; that the price paid by Cities Service Gas Company is not shown in the record.

6. That the common source of supply of gas in said field is found at approximately 2600 to 2900 feet, and the average thickness of the producing formation is 40 to 45 feet; that there appear to be several separate horizons, although the evidence discloses that these are only breaks in the formation and the whole producing formation constitutes one common source of supply; that the original shut-in pressure of said wells is approximately 450 pounds per square inch, and there has been some decline in pressure since the first well was brought on to production.

7. That from present available information it appears that the Hugoton Gas Field is one of the largest and most important gas fields in the State of Oklahoma, with total reserves of approximately nine trillion cubic feet.

8. That there are several pipelines extending from the Texas Panhandle across Texas County and into the State of Kansas, which are not connected with any of the producing gas wells in Oklahoma; that a large part of the gas which is being consumed from that general area in which the Hugoton Field is located is being produced from that part of the Hugoto Field located in Kansas or from the Texas Panhandle, although much of the gas produced in the Texas Panhandle may be from a different common source of supply than that in Texas County.

9. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is of

common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which is not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

10. That from production gauges made in said field it appears that the daily protential capacity of the individual wells varies from 4,000,000 to 50,000,000 cubic feet; that the Commission in Order No. 16377 adopted a method for determining the natural flow of wells, which was called deliverability; that since that time deliverability tests have been made on many of the wells in said field, but said tests were not made in exact accordance with said Order No. 16377, but were made in accordance with the provisions of this order as hereinafter specifically set out, and that there is now being taken tests made as specifically provided for herein.

11. That the full production of gas from wells in said field is greatly in excess of the market demand and of the transportation and marketing facilities.

12. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the

amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

13. That pursuant to said statutes the Corporation Commission in the year 1916 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this state, and have been amended in only a few particulars since that time; that said rules and regulations do not establish a method for determining the natural flow of the wells and do not take into consideration the acreage drained by said wells, and are generally insufficient to carry out the objects of the laws of the State of Oklahoma as to gas production from said Hugoton Field.

14. That it is necessary to amend the general rules and regulations and adopt and promulgate additional rules for the production of gas from the Hugoton Field in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

15. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as natural flow, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and natural flow are the most important; that in determining the ability of a well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered.

16. That it appears that one well in said field will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the governmental survey, and there is no such section that has more than one well, but the acreage communitized for the drilling of such wells has not been in all instances all within one section, nor are the wells heretofore drilled all located in the approximate center of a section; that since the promulgation of Order No. 16377 all wells have been drilled on communitized leases entirely within one section according to the governmental survey, with the well in the approximate center thereof; that except as otherwise specificially provided all units should contain not to exceed 640 acres all within one section as determined by the United States Governmental Survey and each well should be located as nearly as practicable in the center of a unit, unless otherwise specifically ordered by the Commission; that the acreage factor for the purposes of the allocation formula should be not to exceed 640 acres all within one governmental section with the well in the approximate

center thereof unless otherwise specifically ordered by the Commission.

17. That the deliverability factor, hereinafter set out in this order, which takes into consideration the natural flow of wells, porosity, permeability, pressures, thickness of formation, and other factors, should be adopted in making allocations to wells in the field.

18. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas taken from said field, and ultimately the approximate amount of gas originally underlying his land.

19. That in the Hugoton Field, as in gas fields generally, there exist many small and separately owned tracts on which it would not be practical or profitable to drill, and the operators, lessees, and royalty owners should be encouraged to communitize said tracts into units as described in this order, and production should be divided among those interested in the proportion that the acreage is owned; provided that, if the owners in any tract are unable to agree upon a proper distribution, the Commission should determine the same and authorize the production so as to carry out the intent of the laws of the State of Oklahoma.

20. That in determining allocations in said field, only developed acreage should be considered; and developed acreage shall mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to make a

pipeline connection or deliver his gas to other market at the going price for gas in the field.

21. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems same advisable.

22. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period, and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

23. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Hugoto Field, to prevent waste, protect the interests of the public and of all those having a

right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage, and encourage future development.

DECLARATION OF POLICY

IT IS THE INTENTION, PURPOSE, AND POLICY OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA IN ISSUING THIS RDER TO PROMULGATE RULES AND REGULATIONS AS AUTHORIZED AND DIRECTED BY THE LAWS OF THE STATE OF OKLAHOMA GOVERNING PRODUCTION OF NATURAL GAS IN ORDER TO PREVENT WASTE, PROVIDING A UNIFORM METHOD OF DETERMINING THE NATURAL FLOW OF WELLS AND FOR RATABLE TAKING OF GAS, IN ORDER TO PROTECT THE INTERESTS OF THE PUBLIC AND ALL PARTIES INTERESTED THEREIN, AND TO GIVE EACH OPERATOR AN OPPORTUNITY TO PRODUCE CURRENTLY HIS PROPORTIONATE PART OF THE GAS AND ULTIMATELY TO PRODUCE APPROXIMATELY THE AMOUNT OF GAS ORIGINALLY UNDERLYING THE SURFACE OF THE LAND OWNED BY HIM.

IT IS NOT THE INTENTION TO LIMIT OR RESTRICT THE MARKET DEMAND FOR GAS IN THE HUGOTON FIELD, BUT ONLY TO RESTRICT PRODUCTION TO MARKET DEMAND AND PRORATE PRODUCTION EQUITABLY AND FAIRLY AMONG THE PRODUCERS AND OWNERS.

IT IS FURTHER THE INTENTION OF THE COMMISSION THAT THAT PORTION OF THE HUGOTON FIELD IN THE STATE OF OKLAHOMA

BE HEREAFTER REFERRED TO AS THE GUYMON HUGOTON FIELD.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 16377, heretofore issued by the Commission, and shall be effective as to the drilling and production of wells and the taking and transportation of natural gas in the Hugoton Field, located in Texas County, Oklahoma, the productive area of which covers a large part of said county and extends north into the State of Kansas and south into the State of Texas, but the boundaries of which cannot be determined with certainty until more wells are drilled. All wells in the field are producing from the same common source of supply of gas.

2. ALLOCATION FORMULA—A formula shall be, and is hereby, adopted for the purpose of allocating gas production to the wells in the field, which formula shall consist of acreage and deliverability factors, as hereinafter defined; and same formula shall be applied as herein set out.

3. ACREAGE FACTOR—(a) Each operator in said field shall divide his acreage into units, which shall be considered by the Commission as the acreage drained by each well in allocating gas production so as to protect the interests of all parties and prevent waste and equalize drainage. A unit, as used in this order, shall consist of not more than 640 acres, which shall be in one section according to the United States Governmental Survey thereof; provided that, where it is shown by clear, cogent, and convincing proof that it is impossible or impracticable to form a unit entirely within one section, the Commission may

approve an exception thereto upon the filing of an application by the operator and after due notice and hearing; but no presumption shall arise from this order that the Commission will authorize the organization of any unit where the acreage is not entirely within one section. Short sections lying adjacent to the Kansas-Oklahoma state line, which according to the United States Governmental Survey contain materially less than 640 acres may be communitized with adjoining 640-acre sections upon approval and order of the Commission after notice and hearing; provided that, the acreage factor for such unit in the allocation formula shall not exceed 800 acres.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production only developed acreage shall be considered; and developed acreage shall mean any unit on which there is one or more producing wells having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order.

(c) Whenever two or more leases, or parts of leases, are consolidated for the purpose of forming a unit as defined in this order, such consolidated lease shall be developed and operated as a single lease, and the gas production therefrom shall be distributed and allocated to the separate tracts within the unit in the ratio that the acreage contained in each tract within the unit bears to the whole and undivided acreage contained in the unit,

and the royalty accruing by reason of said production, unless the royalty owners otherwise unanimously agree in writing, shall be distributed, apportioned, and paid in accordance with said ratio. If the owners of separately owned tracts and the royalty owners cannot agree upon a unit and the proper distribution of the production, then the Commission will, upon application of any interested party, and after due notice and hearing, determine and order what should constitute a unit and the proper division and apportionment of the production between the owners of leases, royalties, and mineral rights in order to insure to each his just and equitable share of the production and insure equitable taking and protect the correlative rights of all interested parties.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the units, and in no event shall be farther from the center thereof than the center of one of the four ten-acre tracts adjacent to the center of the unit, except upon special order of the Commission after notice and hearing.

4. (a) DELIVERABILITY FACTOR - PRESSURE.—The deliverability of each connected well in the Hugoton Field shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72)

hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the field will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average producing rate for the entire 72-hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above atmosphere assumed to be 14.4#, shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R \left(\frac{P^2 - Pd^2}{P^2 - Pw^2} \right)^{.85}$$

Where D = Deliverability.
R = Observed producing rate.
P = Shut-in pressure of the well, pounds absolute.
Pd = Deliverability standard pressure, converted to pounds absolute.
Pw = Working well-head pressure at Rate R, pounds absolute.

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its open flow considered in connection with the average relationship between open flow and deliverability of all wells in the field. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed.

(b) The deliverability of each well in the field shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of October 1, 1944, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission.

(c) The Conservation Officer shall give written notice to each operator and producer in the field of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

5. WELL ALLOWABLES—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a field allocation factor shall be determined by dividing the total anticipated production from the field for such period by the sum of the product of deliverability times the acreage factor for all the wells in the field; then multiply the field allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided, however, if at any time during any allowable period it appears to the Conservation Officer

that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) Before a well is entitled to an allowable the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remaining part of said period.

6. ALLOWABLE PERIODS — HEARINGS. There are hereby established two market demand periods for each year, one beginning April 1 and ending September 30 and the other beginning October 1 and ending March 31, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems

same advisable; and additional hearings may be called upon the application of the Conservation Officer, Conservation Attorney, or any other interested party.

7. UNDERPRODUCTION AND OVERPRODUCTION — All underproduction and overproduction occurring in any alloable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, same shall be canceled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.

8. All purchasers, takers, and producers of gas in the Hugoton Field shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes, by purchasing, producing, and taking all of the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

9. This order shall be effective as of January 1, 1945, as of 7 o'clock, A.M.

10. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing in this cause, or from any other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

11. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

DONE AND PERFORMED by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 27th day of December, 1944.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

REFORD BOND, Chairman

RAY O. WEEMS, Vice-Chairman

_____ Commissioner

ATTEST:

TOM MCMURRAY, Secretary

(SEAL)

APPENDIX "H"

BEFORE THE CORPORATION COMMISSION, OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF WALKER T. POUND, CONVERSATION OFFICER, FOR A WELL SPACING ORDER AND RULES AND REGULATIONS GOVERNING PRODUCTION AND RATABLE TAKING OF NATURAL GAS IN THE GUYMON HUGOTON FIELD, TEXAS COUNTY, OKLAHOMA	CAUSE CD No. 983 ORDER No. 17867

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock A.M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made: Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C. Foulson, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. De Parade for Phillips Petroleum Company; Del Howard and

Joe Rolston, Jr., for Cities Service Gas Company; Jarman and Jarman by Ed White for A. P. Gardner; and John Schoeppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1945, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate and hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its Order No. 17410 in Cause CD No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1st, 1945.

4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the

largest gnown gas reserves in the United States; that a large portion of said field lies within Texas County, Oklahoma, and has been named by this Commission the "Guymon-Hugoton Pool"; that the probable productive area of said pool is hereinafter more specifically described in this order.

5. That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are inter-connected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet; that an average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

6. That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pres-

sure, and that drainage thus caused, which if not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool, and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410 should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity

to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

11. That pursuant to said statutes the Corporation Commission in January, 1945, adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the general Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in this order should be adopted by the Commission to

permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and percentage of capacity to produce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental Survey; that drilling units should be established for said Guymon-Hugoton Pool which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capacity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, and where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that is fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying said unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit

or to make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowable for such unconnected well should begin as hereinafter provided in this order.

19. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing receding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period; and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the produc-

tion of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage not offset by counterdrainage, and encourage future development.

DECLARATION OF POLICY

IT IS THE INTENTION, PURPOSE, AND POLICY OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA IN ISSUING THIS ORDER TO PROMULGATE RULES AND REGULATIONS AS AUTHORIZED AND DIRECTED BY THE LAWS OF THE STATE OF OKLAHOMA GOVERNING PRODUCTION OF NATURAL GAS IN ORDER TO PREVENT WASTE, PROVIDING A UNIFORM METHOD OF DETERMINING A PERCENTAGE OF THE WELL'S CAPACITY TO PRODUCE, AND FOR RATABLE TAKING OF GAS, IN ORDER TO PROTECT THE INTERESTS OF THE PUBLIC AND ALL PARTIES INTERESTED THEREIN, AND TO GIVE EACH OPERATOR AN OPPORTUNITY TO PRODUCE CURRENTLY HIS PROPORTIONATE PART OF THE GAS AND ULTIMATELY TO PRODUCE APPROXIMATELY THE AMOUNT OF GAS ORIGINALLY UNDERLYING THE SURFACES OF THE LAND OWNED BY HIM.

IT IS NOT THE INTENTION TO LIMIT OR RESTRICT THE MARKET DEMAND FOR GAS IN THE GUYMON HUGOTON POOL, BUT ONLY TO RESTRICT PRODUCTION TO MARKET DEMAND AND PRORATE PRODUCTION EQUITABLY AND FAIRLY AMONG THE PRODUCERS AND OWNERS.

IT IS FURTHER THE INTENTION OF THE COMMISSION THAT THAT PORTION

OF THE HUGOTON FIELD IN THE STATE OF OKLAHOMA BE REFERRED TO AS THE GUYMON HUGOTON POOL.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;

Townships Two (2), Three (3), and Four (4) North, Ranges Twelve (12) to Eighteen 18) East; and

Townships Five (5) and Six (6) North, Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian;

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above described shall be drilled in the manner and according to the pattern herein described.

The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled to points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. ALLOCATION FORMULA—A formula shall be, and is hereby adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. ACREAGE FACTOR—(a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. *Before any unconnected well shall be granted*

an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) DELIVERABILITY FACTOR — PRESSURE — The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72-hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above

atmosphere assumed to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R \left(\frac{(P^2 - Pd^2)}{(P^2 - Pw^2)} \right)^{.85}$$

Where D = Deliverability
R = Observed producing rate
P = Shut-in pressure of the well, pounds absolute
Pd = Deliverability standard pressure, converted to pounds absolute
Pw = Working well-head pressure at Rate R, pounds absolute

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in presure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverabilty of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered

in connection with the average relationship between the estimated capacity to produce and deliberability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable shall be made retroactive to the date when the well was first entitled to an allowable.

(b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. WELL ALLOWABLES—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of

deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of communitized acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. ALLOWABLE PERIODS — HEARINGS — There are hereby established two market demand periods for each year, one beginning April 1st and ending September 30th and the other beginning October 1, and ending March 31st, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the

ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. UNDERPRODUCTION AND OVERPRODUCTION — All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. *When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be canceled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.*

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own pro-

duction, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners, ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

DONE AND PERFORMED by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

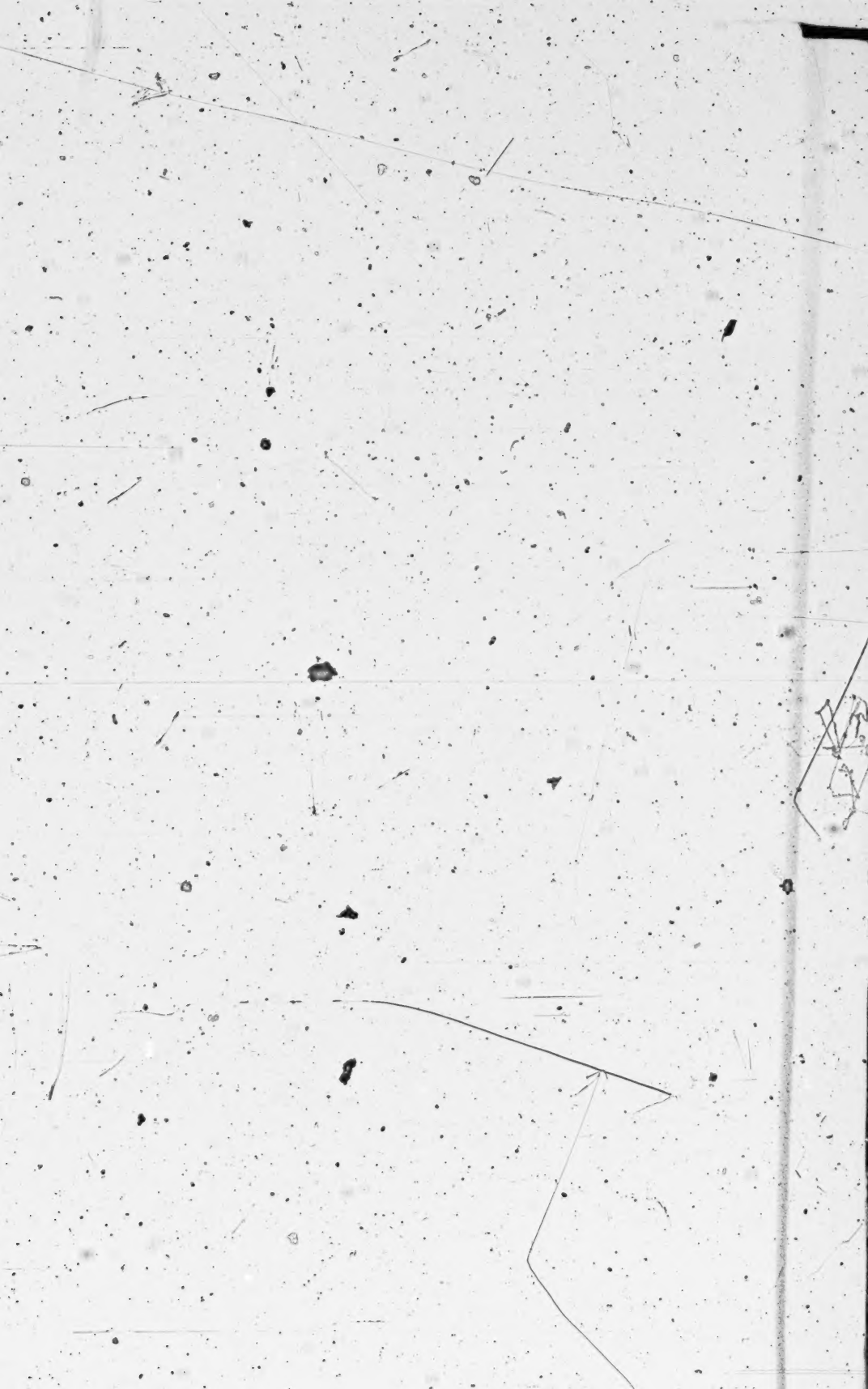
REFORD BOND, Chairman

RAY O. WEEMS, Vice-Chairman

.....Commissioner

ATTEST:
TOM MCMURRAY
Secretary

(SEAL)



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No. 134

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CHARLES ELMORE CROPLEY

In the Supreme Court of the United States

October Term, 1947

REPUBLIC NATURAL GAS COMPANY,
Appellant,
vs.
STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL AND GAS COMPANY, a Corporation,
Appellees.

Application for Leave to File Supplemental Brief, and Supplemental Brief.

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Application for Leave to File Supplemental Brief, and Supplemental Brief.

APPLICATION

Come now appellees and request that this Court grant them permission to file supplemental brief herein.

SUPPLEMENTAL BRIEF

Additional authorities and argument in support of motion to dismiss and Proposition 1.

Appellees contend in their motion to dismiss (P. 7-8) and in their brief that the matters involved herein have been foreclosed by previous decisions of this court,

particularly *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125, which case involved an appeal from a decision of the Supreme Court of the State of Oklahoma in the case of *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 190 Pac. 857. Justice Rainey, now one of the attorneys for appellant, concurred in that opinion.

The case of *Pierce Oil Corporation* v. *Phoenix Refining Company* construed the Oklahoma oil pipe line statute which was enacted in 1909 by the Legislature of Oklahoma, being Chap. 26, Session Laws, 1909, which statute is now carried as Sections 51-66 inclusive, of Title 52, Oklahoma Statutes, 1941.

Except in instances where the language of that statute differs by reason of the fact that it dealt with oil and oil pipe lines, it is, for all practical purposes, identical with the provisions of Chap. 99, Session Laws, 1913, now carried as Sections 21-35 inclusive, of Title 52, Oklahoma Statutes, 1941 (Appendix C).

The opinion of this Court in the case of *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra, referred to and construed Section 4304 Revised Laws of Oklahoma, 1910; now carried as Section 51 of Title 52, Oklahoma Statutes, 1941; Section 4309 Revised Laws of Oklahoma, 1910, now carried as Section 56, Title 52, Oklahoma Statutes, 1941, and Section 4311 Revised Laws of Oklahoma, 1910, now carried as Section 58 of Title 52, Oklahoma Statutes, 1941. The Sections of the Statute referred to are set out as Appendix "I" of this supplemental brief.

It will be seen that Section 51 of Title 52, Oklahoma Statutes 1941, Section 4304 Revised Laws of Oklahoma, 1910, is identical in provisions with Section 1, Chap. 99, Session Laws 1913 (Appendix C) now carried as Section

21, Title 52, Oklahoma Statutes, 1941; that Section 56 of Title 52, Oklahoma Statutes, 1941, Section 4309 Revised Laws, 1910, is identical to the provisions of Section 4 of Chap. 99, Session Laws 1913, now carried as Section 24 of Title 52, Oklahoma Statutes 1941, except as to the proviso contained in said Section 24 which is immaterial for the purposes under consideration herein, and that Section 58 of Title 52, Oklahoma Statutes, 1941, Section 4311 Revised Laws of Oklahoma, 1910, is identical with Section 6, Chap. 99, Session Laws 1913 (Appendix C), now carried as Section 26, Title 52, Oklahoma Statutes, 1941.

The oil pipe line statute referred to in the opinion of this court in *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra, and the gas pipe line statute involved herein, Chapter 198 Session Laws 1915, have been reenacted again and again by the Legislature of Oklahoma in the 1921 Code, the 1931 Code and 1941 Code. See opinion of the Supreme Court of Oklahoma in the instant case. The Supreme Court of Oklahoma, in the instant case, cited and relied upon the opinion of this court in the case of *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra. Since the statutory provisions are identical we respectfully submit that the Pierce case fully and completely disposes of the matters involved herein.

Appellant attempts to distinguish the case at bar from the Pierce case by saying that (1) the operations involved in the Pierce case were wholly intra-state, and (2) that Pierce Oil Corporation had transported oil for hire.

The Supreme Court of the State of Oklahoma, in the instant case, disposed of the first contention by saying "Republic contends that the order invades the field of federal cognizance and interferes with and burdens commerce between the states, contrary to Art. 1, section 8 of

the Federal Constitution, citing *Texoma Natural Gas v. Railroad Commission of Texas*, supra. Assuming without deciding that in some instances such an order might burden commerce between the states, there is here no showing that such effect will be produced by the order here appealed from. The evidence shows that Republic is delivering gas to a common purchaser within the State of Oklahoma."

We do not understand that Republic now contends that the order involved constitutes a burden on or regulation of interstate commerce. No assignment of error to that effect has been made and there is no statement of point relied on to that effect. In any event, however, since the order was entered in this case Republic has discontinued the making of deliveries of gas, produced by it in Oklahoma, to Northern Natural Gas Company in the State of Kansas, and its operations are now wholly intra-state.

Aside from having transported natural gas for others in consideration of the right to use scarce materials, Republic was and is otherwise engaged in the transportation of natural gas for hire at times involved herein. It transported and delivered natural gas to Northern Natural Gas Company and received therefor 6 cents per thousand cubic feet, of which 1 cent per thousand cubic feet was compensation for transportation of the natural gas, involved, from the wells from which the same was produced to Northern Gas Company. Although the contract with Cities Service Gas Company does not specifically state what portion of the 4½ cents is for gathering and transportation of the natural gas from Republic's wells for delivery to Cities Service Gas Company, a commensurate portion thereof was and is undoubtedly paid for such transportation. The Supreme Court of the State of Oklahoma in the instant

case said "the evidence before the Commission indisputably established that the gas taken from the Hugoton field by Republic was not taken for the purposes of developing a gas or oil field, or operating oil wells, or for its own domestic use, but was taken solely for the transportation and sale thereof to common purchasers and common carriers of gas in order that by such transportation and sale Republic might derive a profit, such profit being its sole source of income so far as the record discloses."

So Republic did and does transport natural gas for compensation and hire. The vice-president of Republic, Alfred Hurlburt, testified that Republic paid its royalty owners at the rate of one-eighth of 5 cents per thousand cubic feet; the difference between one-eighth of 5 cents and one-eighth of 6 cents being a charge for the transportation of the natural gas involved. (R. 149-158 inc. 460).

Republic transported the gas to the common purchasers involved as a matter of choice under voluntary contract. The arrangement was no doubt made, as the Supreme Court found, in order that Republic might realize a profit therefrom. Having chosen to transport natural gas for compensation and hire, it must either submit itself to the laws of Oklahoma requiring it to be a common purchaser and common carrier, or it must not own oil and gas leases. It chose to own oil and gas leases, to drill wells thereon, and transport natural gas therefrom for compensation and hire and thereby elected to be subject to the laws of the State of Oklahoma which required it, under such circumstances, to be a common purchaser and a common carrier. We submit there is no distinction between the instant case and the case of *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra.

In line with *The Pipe Line Cases*, 234 U. S. 548, and *Valvoline Oil Company* v. *U. S.*, 308 U. S. 141, the substance and not the form of the transaction should govern.

Republic cites a number of cases which it contends are contrary to the opinion of this court in the case of *Pierce Oil Corporation* v. *Phoenix Refining Company*. An examination of the cases cited demonstrates that none of said cases are in fact contrary to the decision of this court in the Pierce case.

In *Washington* v. *Superior Court*, 289 U. S. 361, *Phillips Pet. Co.* v. *Jenkins*, 297 U. S. 629, *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, *Quaker City Cab Co.* v. *Commonwealth of Penn.*, 277 U. S. 389, *Hanover Fire Ins. Co.* v. *Harding*, 272 U. S. 494, *Northwestern Nat. Ins. Co. of Milwaukee, Wis.*, v. *Lee*, 49 F. 2d 274, *Kentucky Finance Corporation* v. *Paramount Auto Exchange Corporation*, 262 U. S. 544, the sole question involved was alleged denial of equal protection. Since the statutes involved, herein, apply alike to individuals, partnerships and corporations, both domestic and foreign, there is and can be no denial of equal protection involved and the foregoing cases are therefore not in point.

In the case of *W. W. Cargill* v. *Minnesota*, 180 U. S. 452, there was involved an alleged violation of the equal protection clause and alleged interference with interstate commerce. The statute there involved was held not repugnant to the Federal Constitution.

In the case of *Terral, as Sec. of State of Arkansas*, v. *Burke Const. Company*, 257 U. S. 529, there was involved a denial of resort to Federal court through revocation of the corporation's permit to do business. It should be noted

that this case was decided prior to the decision in the Pierce case.

In the case of *Union Pac. Ry.* v. *Public Service Commission*, 248 U. S. 67, it was held there was no estoppel because the application for certificate to issue bonds was made under protest and duress. The case did not involve legislation enacted prior to the corporation's entry into the state. The business involved was wholly interstate and the case was decided on the ground that the statute involved interfered with interstate commerce.

In the case of *Connecticut General Life Ins. Co.* v. *Johnson, Treasurer of California*, 303 U. S. 77, this court said "No contention is made that appellant has consented to the tax imposed as a condition of the granted privilege to do business in the state."

In *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, there was involved an attempt to cancel permit of a corporation by reason of its having made payment of commissions to agents in other states. This court held that a state cannot use its power to exclude a foreign corporation from doing business as means of regulating its conduct outside of the state. In this connection see *Osborn* v. *Ozlin*, infra.

In *Foster-Fountain Packing Co. et al.* v. *Haydel*, 278 U. S., and in *Dahnke-Walker Milling Co.* v. *Bondurand*, 257 U. S. 282, there was involved an alleged interference with interstate commerce.

We have already demonstrated in our original brief that the decision of this court in the case of *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, is not contrary to the decision of this court in the case of *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra.

In *Fiske* v. *Kansas*, 274 U. S. 380, and *Hamilton* v. *Regents of University of California*, 293 U. S. 245, there was involved alleged deprivation of liberty in violation of the due process clause.

In *King Mfg. Co.* v. *City Council of Augusta*, 277 U. S. 100, *Northern Pac. Railway Company* v. *The Department of Public Works, State of Washington*, 268 U. S. 39, and *Bluefield Water Works & Improvement Co.* v. *Public Service Comm. of State of W. Va.*, 262 U. S. 679, there was involved alleged confiscatory rates. Such cases are clearly not applicable for the reason that whether or not rates were confiscatory would depend entirely upon the evidence in each particular case and would not depend upon interpretation of a statute or an ordinance.

In *Corn Products Refining Co.* v. *Eddy, et al.*, 249 U. S. 427, a regulation respecting the labeling of syrup compounds was held not objectionable.

In *Producers Transportation Co.* v. *Railroad Comm. of the State of California*, 251 U. S. 228, there was involved a state common carrier statute similar to provisions of the statutes involved in this case and the court upheld the statute.

The case of *Spaulding et al.* v. *Douglas Aircraft Co., Inc., et al.*, 145 F. 2d 419 (9 C.C.A. 1946) is not contrary to but recognizes the rule in *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra.

In *Canadian Pas. Ry. Co.* v. *Sullivan*, 126 F. 2d 433 (1 C.C.A. 1942) the corporation involved was engaged solely in interstate commerce. It did not make an affirmative election to come under and accept the laws of the state and had received no benefits therefrom.

Republic also cites the case of *Springfield Fire & Marine Ins. Co.* v. *Holmes*, 32 F. Supp. 964, saying that the same was reversed on other grounds in 311 U. S. 606. The lower court in that case held that the statute in question was in violation of the due process clause of the Federal constitution. Contrary to the statement contained in Republic's brief (page 25, footnote) this case was not reversed on other grounds. The judgment was reversed on authority of *Osborn* v. *Ozlin*, 310 U. S. 53 (311 U. S. 606). The decision and opinion in that case are directly contrary and opposed to every contention which Republic makes in the instant case. In its opinion in that case this court said: "When these beliefs are emphasized by legislation embodying similar notions of policy in a dozen states, it would savor of intolerance for us to suggest that a legislature could not constitutionally entertain the views which the legislation adopts. Compare *Prudential Ins. Co.* v. *Cheek*, 259 U. S. 530, 537."

"The present case, therefore, is wholly unlike those instances in which a 'so-called right is used as part of a scheme to accomplish a forbidden result.' *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, 434. For it is clear that Virginia has a definable interest in the contracts she seeks to regulate and that what she has done is very different from the imposition of conditions upon appellants' privilege of engaging in local business which would bring within the orbit of state power matters unrelated to any local interests. It is not our province to measure the social advantage to Virginia of regulating the conduct of insurance companies within her borders insofar as it affects Virginia risks. Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestations of nature and other vicissitudes of life have long been withdrawn from the benefits

and caprices of free competition. The state may fix insurance rates, *Germain Alliance Ins. Co. v. Lewis*, 233 U. S. 389; it may regulate the compensation of agents, *O'Gorman & Young* v. *Hartford Fire Ins. Co.*, 282 U. S. 251; it may curtail drastically the area of free contract, *National Ins. Co.* v. *Wanberg*, 260 U. S. 71. States have controlled the expenses of insurance company, New York Insurance Law, Consolidated Laws of New York, c. 28, sec. 244, and Wisconsin Statutes, sec. 201-21; and see Report of Joint (Armstrong) Insurance Investigation Committee (N. Y.) pp. 403-18, (1906). They have also promoted insurance through savings banks; see Berman, The Massachusetts System of Savings Bank Iife Insurance, Bulletin No. 615, U. S. Bureau of Labor Statistics, and New York Laws of 1938, c. 471. In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, *Green* v. *Fraizer*, 253 U. S. 233, or might take 'the whole business of banking under its control,' *Noble State Bank* v. *Haskell*, 219 U. S. 104, 113. If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in devising and safeguarding protection against its local hazards. *La Tourette* v. *McMaster*, 248 U. S. 465. All these are questions of policy not for us to judge. For it can never be emphasized too much that one's own opinion as to the wisdom of a law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control."

In its brief Republic contends that even though the rule in the Pierce case is applicable to the statute involved it is not applicable to the order of the Commission for the reason that the same is legislation enacted subsequent to Republic's entry into the State of Oklahoma and its acceptance of the laws of the state (Brief p. 41). An examination of the authorities cited by Republic in this connection reveal that there was involved in those cases an attack on the application of the statute. In *Bacardi Corp.* v. *Domenech*, 311 U. S. 150, the statute was upheld. The court further distinguishes that case from the case at bar, saying "It does not appear that petitioner applied for permit under Act of 1937, which is the subject of attack." The court further said, "We think the legislature of Puerto Rico in the exercise of its police power had full authority to deal with the manufacture of, and traffic in, intoxicating liquors, so far as the Island was affected. * * *"

Republic contends that the order involved constitutes a subsequent statute which appellant is free to assail without impairment from the doctrine of estoppel. We have already demonstrated that the statute in question is plain and unambiguous and clearly applicable to Republic. However, the cases cited by Republic in this connection are not applicable, as has been heretofore demonstrated.

In the *Sulton Ry. & T. Co.*, v. *Department of Labor and Ind.*, 277 U. S. 135, the contention here made by Republic was not involved, and, furthermore, the order involved was upheld.

In none of the cases, on which Republic relies as being contrary to the rule in *Pierce Oil Corporation* v. *Phoenix Refining Company*, supra, was there involved:

(a) A statute such as Chap. 198 Session Laws, 1913, which deals with and prescribes the reciprocal rights and obligations of property owners.

(b) A statute intended, as is Chap. 99 Session Laws, 1913, to prevent the evils that naturally result when the same entity is permitted to own and produce oil and gas leases and also to transport natural gas.

(c) Statutes which deal with the conservation of natural resources and the protection of correlative rights of the owners.

(d) Statutes which govern producers of natural gas and provide that all who produce natural gas for resale to the public, for light, heat and power, are public utilities.

In any event, however, the decision in the case of *Pierce Oil Corporation v. Phoenix Refining Company*, supra, is not based on estoppel alone. An examination of the opinion in that case discloses this court, in that case, held that the order involved did not result in a taking of property in violation of the due process clause of the Federal Constitution.

Additional authorities and Argument in Support of Proposition 2.

Under our proposition 2 we contend that the legislation involved governs ownership of property and provides for the reciprocal rights and obligations with reference thereto and is therefore within the exclusive jurisdiction of the state.

In this connection the provision of Chap. 198, Session Laws, 1913 (Appendix D) that any person, firm or corporation who takes gas from a natural gas field except for purposes of developing a gas or oil field, and operating oil wells, and for purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in such gas, etc., is, we think in effect,

a servitude and easement upon the property and property rights of Republic, which it acquired subsequent to the enactment of said statute.

In *Eldridge* v. *Trezevant*, 160 U. S. 452, this court said:

> "These decisions not only dispose of the proposition that lands, situated within a State, but whose title is derived from the United States, are entitled to be exempted from local regulations admitted to be applicable to lands held by grant from the State, but also of the other proposition that the provisions of the Fourteenth Amendment extend to and override public rights, existing in the form of servitudes or easements, held by the courts of a State to be valid under the constitution and laws of such State.
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> "The subject-matter of such rights and regulations falls within the control of the States, and the provisions of the Fourteenth Amendment of the Constitution of the United States are satisfied if, in cases like the present one, the state law, with its benefits and its obligations, is impartially administered." (pp. 468, 469)

Additional Argument and Authorities in Support of Proposition 4.

Under proposition 4 we contend that entirely aside from the utility, common carrier and common purchaser statutes of the State of Oklahoma, the order of the Commission involved herein constitutes a valid exercise of the police powers of the State for the protection of correlative rights.

In our original brief we neglected to cite or quote from *Walls, Attorney General of the State of Wyoming, et al.*, v. *Midland Carbon Company, et al.*, 254 U. S. 300. This case, in our judgment, is ample authority for our propo-

sition that protection of correlative rights alone is sufficient justification for order such as is involved in the instant case. In that case this court said:

> "The statute was sustained as a lawful exercise of the police power of the State against the assertion of the right of one citizen to use the public domain as much as another citizen, and that to impose damages upon him for the exercise of the right deprived him of his property without due process of law, and, besides, arbitrarily discriminated between sheep grazing and the grazing of other kinds of stock. We there said in substance that, the power of regulation existing, the imposition of some limit to a right, when its exercise would impinge upon the equal right of another, was the exercise of legislative power and that the circumstances which induced it could not be pronounced illegal 'on surmise or on the barren letter of the statute.' And we said further, that where equal rights existed the State has an interest in their accommodation. Pertinent cases were cited, and the exclusion from grazing within two miles of the possessory claim of another was decided to be legal, that 'the selection of some limit is a legislative power,' and that it was 'only against the abuse of the power if at all, that the courts may interpose.' The mere distance expressed nothing.
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> "The case, and those it cites, are authority for the position that a State may consider the relation of rights and accommodate their co-existence, and, in the interest of the community, limit one that others may be enjoyed. Of this Ohio Oil Co. v. Indiana, 177 U. S. 190, is especially illustrative and pertinent and conducts naturally to the consideration of the second proposition, that is, to the element of heat utilization. (Page 315)

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"It was decided, however, that before that event occurs, indeed in prevention of it, the State may interpose its power to prevent a waste or disproportionate use of either oil or gas by a particular owner in order to conserve the equal right of other owners and advance the public interest.

* * * * *

"Necessarily, therefore, it was adjudged that their use by one owner of the surface affected the use of other owners, and an excessive use by one diminished the use by others, and a similarity of other minerals, as we have seen, was rejected; and the analogy between oil and gas and animals ferae naturae was declared. It was hence decided that the power of the State 'can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.' (Page 317)

* * * * *

"And in this consideration it is more important to consider not for what a particular owner uses the gas, but the proportion of his use to that of others, or it may be, the prevention of use by others. * * *" (Page 319)

In this connection Republic contends that the order involved constitutes taking of property not for a public use but for a private use. There are many decisions in which this court has recognized the inadequacy of use by the public as a universal test.

In the case of *Clark* v. *Nash*, 198 U. S. 363, this court said:

"We are, however, as we have said, disposed to agree with the Utah court with regard to the valid-

ity of the state statute, which provides, under the circumstances stated in the act for the condemnation of the land of one individual for the purpose of allowing another individual to obtain water from a stream in which he has an interest, to irrigate his land, which otherwise would remain absolutely valueless.

"But we do not desire to be understood by this decision as approving of the broad proposition that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the State. We simply say that in this particular case, and upon the facts stated in the findings of the court, and having reference to the condition already stated, we are of opinion that the use is a public one, although the taking of the right of way is for the purpose simply of thereby obtaining the water for an individual, where it is absolutely necessary to enable him to make any use whatever of his land, and which will be valuable and fertile only if water can be obtained. Other land owners adjoining the defendant in error, if any there are, might share in the use of the water by themselves taking the same proceedings to obtain it, and we do not think it necessary, in order to hold the use to be a public one, that all should join in the same proceedings or that a company should be formed to obtain the water which the individual land owner might then obtain his portion of from the company by paying the agreed price, or the price fixed by law." (pp. 369, 370)

In *Strickley* v. *Highland Boy Gold Mining Company*, 200 U. S. 527, this court said:

"The plaintiffs in error set up in their answer to the condemnation proceedings that the right of way demanded is solely for private use, and that the taking of their land for that purpose is contrary to

the Fourteenth Amendment of the Constitution of the United States.

* * * * *

"If the statutes were constitutional as construed, we follow the construction of the state court.

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"In discussing what constitutes a public use it recognized the inadequacy of use by the general public as a universal test. While emphasizing the great caution necessary to be shown, it proved that there might be exceptional times and places in which the very foundations of public welfare could not be laid without requiring consessions from individuals to each other upon due compensation which under other circumstances would be left wholly to voluntary consent. In such unusual cases there is nothing in the Fourteenth Amendment which prevents a State from requiring such consessions. If the state constitution restricts the legislature within narrower bounds that is a local affair, and must be left where the state court leaves it in a case like the one at bar.

"In the opinion of the legislature and the Supreme Court of Utah the public welfare of that State demands that aerial lines between the mines upon its mountain sides and the railways in the valleys below should not be made impossible by the refusal of a private owner to sell the right to cross his land. The Constitution of the United States does not require us to say that they are wrong. * * *" (Pages 530, 531)

In *Otis Co.* v. *Ludlow Co.*, 201 U. S. 140, it is said:

"We are bound to be very cautious in coming to the conslusion that the Fourteenth Amendment has upset what thus has been established and accepted for a long time. Even the incidents of ownership may be cut down by the peculiar laws and usages of a State. Elridge v. Trezevant, 160 U. S. 452, 466. For a century the remedy given by the

statute has been supposed to be sufficient, and in 1832 it was decided to be so under a somewhat similar statute which was held to create a servitude. Boston & Roxbury Mill Corporation v. Newman, 12 Pick. 467." (Page 154)

In *Offield* v. *New York, New Haven and Hartford Railroad Company*, 203 U. S. 372, we find:

"(1) The power of the State to declare uses of property to be public has lately been decided in Clark v. Nash, 198 U. S. 361, and in the case of Strickley v. Highland Boy Mining Company, 200 U. S. 527. These cases exhibit more striking examples of the power of a State than the case at bar. In the first case the statute of the State permitted an individual to enlarge the ditch of another to obtain water for its own land; in the second case the statute authorized the condemnation of a right of way to transport ore from a mine to a railroad station. In the first case it was said that the public policy of the State declaring the character of use of property depends upon the facts surrounding the subject. In the second case it was said, commenting on the first, 'it provided that there might be exceptional times and places in which the very foundations of public welfare cannot be laid without requiring concessions from individuals to each other upon due compensation, which under other conditions would be left wholly to voluntary consent.' The case at bar does not need the support of such broad principles. The ultimate purpose of defendant in error in the case at bar is the improvement of the New Haven and Derby Railroad, which connects (we quote from the opinion of the Supreme Court of Errors), at New Haven, on the east with four, and at its western terminals with two, important railroad lines owned by plaintiff (defendant in erro.), and forms a link in an all-rail route between Boston and the West, which is the only one controlled by it over which goods can

be transported with assured dispatch in all weathers and seasons. In this purpose the public has an interest and to accomplish it the court applied the statute. The court observed: 'To develop this route so as best to serve the public interest requires the laying of additional tracks on the New Haven and Derby Railroad and other extensive and very costly improvements. The lessor company has neither means nor credit whereby this can be effected on advantageous terms. The plaintiff could and will effect it, and at much less cost, if it can acquire the two outstanding shares of stock of the lessee. They are owned by the defendant, who refuses to agree on the terms of purchase.'" (Pages 377, 378)

In *Noble State Bank* v. *Haskell*, 219 U. S. 104, this court said:

"• • • Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. Clark v. Nash, 198 U. S. 361. Strickley v. Highland Boy Mining Co., 200 U. S. 527, 531. Offield v. New York, New Haven & Hartford R. R. Co., 203 U. S. 372. Bacon v. Walker, 204 U. S. 311, 315. And in the next, it would seem that there may be other cases beside the every day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. See Ohio Oil Co. v. Indiana, 177 U. S. 190. At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said. (Pages 110, 111)

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"It is not answered by citing authorities for the existence of the right at common law. There are many things that a man might do at common law that the States may forbid. He might embezzle until a statute cut down his liberty." (Page 113)

From *Mt. Vernon-Woodberry Cotton Duck Company* v. *Alabama Interstate Power Company*, 240 U. S. 30, we quote:

"In the organic relations of modern society it may sometimes be hard to draw the line that is supposed to limit the authority of the legislature to exercise or delegate the power of eminent domain. But to gather the streams from waste and to draw from them energy, labor without brains, and so to save mankind from toil that it can be spared, is to supply what, next to intellect, is the very foundation of all our achievements and all our welfare. If that purpose is not public we should be at loss to say what is. The inadequacy of use by the general public as a universay test is established. Clark v. Nash, 198 U. S. 361. Strickley v. Highland Boy Mining Co., 200 U. S. 527, 531. The respect due to the judgment of the State would have great weight if there were a dotibt. Hairston v. Danville & Western Ry. Co., 208 U. S. 598, 607. O'Neill v. Leamer, 239 U. S. 244, 253. But there is none. See Otis Co. v. Ludlow Manufacturing Co., 201 U. S. 140, 151." (Page 32)

In *Block* v. *Hirsh*, 256 U. S. 135, the following language was used:

"It is enough to refer to the decisions as to insurance, in German Alliance Insurance Co. v. Lewis, 233 U. S. 389; irrigation, in Clark v. Nash, 198 U. S. 361; and mining, in Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public

generally of each specific thing affected cannot be made the test of public interest, Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U. S. 30, 32, and that the public interest may extend to the use of land. They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair. See also Noble State Bank v. Haskell, 219 U. S. 104, 110, 111. (Page 155)

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"Under the police power the right to erect buildings in a certain quarter of a city may be limited to from eighty to one hundred feet. Welch v. Swasey, 214 U. S. 91. Safe pillars may be required in coal mines. Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531. Billboards in cities may be regulated. St. Louis Poster Advertising Co. v. St. Louis, 249 U. S. 269. Watersheds in the country may be kept clear. Perley v. North Carolina, 249 U. S. 510. These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation." (Pages 155, 156)

In *Nebbia* v. *New York*, 291 U. S. 502, it is said:

"Touching the matters committed to it by the Constitution, the United States possesses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his

property. But subject only to constitutional restraint the private right must yield to the public need. (Pages 524, 525)

* * * * *

"And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts.

* * * * *

"The court has repeatedly sustained curtailment of enjoyment of private property, in the public interest. The owner's rights may be subordinated to the needs of other private owners whose pursuits are vital to the paramount interests of the community. The state may control the use of property in various ways; may prohibit advertising bill boards except of a prescribed size and location, or their use for certain kinds of advertising; may in certain circumstances authorize encroachments by party walls in cities; may fix the height of buildings, the character of materials, and methods of construction, the adjoining area which must be left open, and may exclude from residential sections offensive trades, industries and structures likely injuriously to affect the public health or safety; or may establish zones within which certain types of buildings or businesses are permitted and other excluded. And although the Fourteenth Amendment extends protection to aliens as well as citizens, a state may for adequate reasons of policy exclude aliens altogether from the use and occupancy of land. (Pages 525, 526)

* * * * *

> "Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. * * * And statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency." (Page 528)

We shall not quote further from the foregoing opinion but the same constitutes full, complete and unequivocal answers to each and every contention made by Republic in the instant case. The Nebbia case has been many times, particularly in recent years, cited with approval by this court in almost every conceivable sort of situation which involves regulation by the states of property, property rights and commerce.

Certainly under the facts in the instant case the order of the Commission cannot be said to constitute a taking of property solely for private purpose. In any event, we believe we have demonstrated in our original brief that there is no taking of property but merely a limitation or restriction upon the use of property.

Respectfully submitted,

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APPENDIX

APPENDIX "I"

Section 4304 Revised Laws of Oklahoma, 1910, now carried as Section 51 of Title 52, Oklahoma Statutes, 1941, is as follows:

"Every corporation, joint stock company, partnership or other person, exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe lines, for hire or otherwise, or exercising or claiming the right to engage in the business of producing crude oil or petroleum, or of refining it, or manufacturing any of the products thereof, or of storing crude oil or petroleum produced by it, or any other person, or engaging in the business of buying, selling or dealing in crude oil or petroleum, within the limits of this State, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying or transporting crude oil or petroleum as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within this State, or have or possess the right of eminent domain, or any other rights, concerning said business or operations, in whole or in part, except as authorized by and subject to the provisions of this Article, and except such rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States. The word 'petroleum' as used herein means all crude oil and its manufactured products, not including natural gas."

Section 4309 Revised Laws of Oklahoma, 1910, now carried as Section 56 of Title 52, Oklahoma Statutes, 1941, is as follows:

> "Every corporation, joint stock company, partnership or person, engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line, within this State, and by virtue of and in conformity to, any valid law incapable of revocation by any laws of this State or of the United States, or by virtue of and in conformity to the provisions of this Article, shall be deemed a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude, stock or storage oil, or any products thereof, in its possession or control, or in which it may be interested, directly or indirectly."

Section 4311 Revised Laws of Oklahoma, 1910, now carried as Section 58 of Title 52, Oklahoma Statute, 1941, is as follows:

> "Before any corporation, joint stock company, partnership or person, shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this Article, or shall have, possess, enjoy or exercise any right (the word 'right' in this connection being used in its most comprehensive legal sense) conferred by this Article, every such corporation, joint stock company, partnership or person shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this Article, and the Constitution of this State, and in cases of pipe lines

a plat showing in detail the points within this State between which, and the route along which, the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk lines; and upon demand of the Corporation Commission the proper party or parties, as required by said Commission, shall promptly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gate valves, check valves and connections, of all kinds, required or used in the operation thereof."

SUPREME COURT OF THE UNITED STATES

No. 134.—October Term, 1947.

Republic Natural Gas Company, Appellant, v. State of Oklahoma, Corporation Commission of the State of Oklahoma and Peerless Oil and Gas Company.	Appeal from the Supreme Court of the State of Oklahoma.

[May 3, 1948.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This is an appeal from a decision of the Supreme Court of Oklahoma, arising from an order of the State Corporation Commission which concerned the correlative rights of owners of natural gas drawn from a common source.

Since 1913, Oklahoma has regulated the extraction of natural gas, partly to prevent waste and partly to avoid excessive drainage as between producers sharing the same pool. The legislation provided that owners might take from a common source amounts of gas proportionate to the natural flow of their respective wells, but not more than 25% of that natural flow without the consent of the Corporation Commission; that any person taking gas away from a gas field, except for certain specified purposes, "shall take ratably from each owner of the gas in proportion to his interest in such gas"; and that such

ratable taking was to be upon terms agreed upon by the various well owners, or, in the event of failure to agree, upon terms fixed by the Corporation Commission.[1]

[1] L. 1913, c. 198, §§ 1–3 (Okla. Stat. (1941) tit. 52, §§ 231–33):

"Section 1. All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state.

"Section 2. Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five percent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well.

"Section 3. Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas . . . ."

See also L. 1915, c. 197, §§ 4, 5 (Okla. Stat. (1941) tit. 52, §§ 239, 240):

"Section 4. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that

The Hugoton Gas Field is one of the largest in the United States, covering a vast area in several States, including Oklahoma. It was discovered in 1924 or 1925,

may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade."

but the Oklahoma portion was not developed until 1937. Republic, a Delaware corporation, obtained permission to do business in Oklahoma in 1938, purchased gas leases in this field and drilled wells, removing the gas in its own pipelines. In 1944, the Peerless Oil and Gas Company completed a well in a portion of the gas field otherwise tapped only by Republic. It had no market for the gas obtained from this well, nor means of transporting such gas to any market. It offered to sell the gas to Republic, which refused it. Peerless then applied to the Corporation Commission for an order requiring Republic to take such gas from it "ratably"—that is, to take the same proportion of the natural flow of Peerless' well as Republic took of the natural flow of its own wells. After a hearing, the Commission found that the production of natural gas in the Hugoton field was in excess of the market demand; that Republic had qualified to do business in Oklahoma with full knowledge of the existing legislation requiring the ratable taking of natural gas; and that Republic was taking more than its ratable share of gas from that portion of the field tapped both by its wells and that belonging to Peerless, thereby draining gas away from Peerless' tract and, in effect, taking property belonging to Peerless. The Commission ordered Republic:

> "1. . . . to take gas ratably from applicant's [Peerless'] well . . . ; and to make necessary connection as soon as applicant lays a line connecting said well with respondent's [Republic's] line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respond-

ent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

On appeal, the Oklahoma Supreme Court affirmed, holding that Republic, having been given leave to enter the State on the basis of the legislation governing natural gas production, might not challenge its validity, and that neither the order nor the legislation on which it is based runs counter to asserted constitutional rights. 198 Okla. 350. The court interpreted the Commission's order as giving Republic "a choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or to shut in its own production from the same common source of supply." 198 Okla. at 356. Invoking both the Due Process and the Equal Protection clauses of the Fourteenth Amendment, Republic appealed to this Court.

This case raises thorny questions concerning the regulation of fugacious minerals, of moment both to States whose economy is especially involved and to the private enterprises which develop these natural resources. Cf. *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55; *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 311 U. S. 570. Before reaching these constitutional issues, we must determine whether or not we have jurisdiction to do so.

Ever since 1789, Congress has granted this Court the power of review in State litigation only after "the highest court of a State in which a decision in a suit could be had" has rendered a "final judgment or decree." § 237 of the Judicial Code, 28 U. S. C. § 344, rephrasing § 25 of the Act of September 24, 1789, 1 Stat. 73, 85. Designed to avoid the evils of piecemeal review, this reflects a marked characteristic of the federal judicial system, unlike that of some of the States. This prerequisite for the exercise of the appellate powers of this Court is especially pertinent when a constitutional barrier is asserted against a State court's decision on matters peculiarly of local concern. Close observance of this limitation upon the Court is not regard for a strangling technicality. History bears ample testimony that it is an important factor in securing harmonious State-federal relations.

No self-enforcing formula defining when a judgment is "final" can be devised. Tests have been indicated which are helpful in giving direction and emphasis to decision from case to case. Thus, the requirement of finality has not been met merely because the major issues in a case have been decided and only a few loose ends remain to be tied up—for example, where liability has been determined and all that needs to be adjudicated is the amount of damages. *Bruce* v. *Tobin*, 245 U. S. 18; *Martinez* v. *International Banking Corp.*, 220 U. S. 214, 223; *Mississippi Central R. Co.* v. *Smith*, 295 U. S. 718. On the other hand, if nothing more than a ministerial act remains to be done, such as the entry of a judgment upon a mandate, the decree is regarded as concluding the case and is immediately reviewable. *Board of Commissioners* v. *Lucas*, 93 U. S. 108; *Mower* v. *Fletcher*, 114 U. S. 127.

There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irrepara-

bly injured if review were unavailing. Cf. *Clark* v. *Williard*, 294 U. S. 211; *Gumbel* v. *Pitkin*, 113 U. S. 545; and compare *Forgay* v. *Conrad*, 6 How. 201, 204, with *Barnard* v. *Gibson*, 7 How. 650, 657. For related reasons, an order decreeing immediate transfer of possession of physical property is final for purposes of review even though an accounting for profits is to follow. In such cases the accounting is deemed a severed controversy and not part of the main case. *Forgay* v. *Conrad, supra; Carondelet Canal Co.* v. *Louisiana*, 233 U. S. 362; *Radio Station WOW* v. *Johnson*, 326 U. S. 120. But a decision that a taking by eminent domain is for a public use, where the amount of compensation has not been determined, is not deemed final, certainly where the property will not change hands until after the award of compensation. *Grays Harbor Logging Co.* v. *Coats-Fordney Co.*, 243 U. S. 251; cf. *Luxton* v. *North River Bridge Co.*, 147 U. S. 337; *Catlin* v. *United States*, 324 U. S. 229.[2] One thing is clear. The considerations that determine finality are not abstractions but have reference to very real interests—not merely those of the immediate parties but, more particularly, those that pertain to the smooth functioning of our judicial system.

On which side of the line, however faint and faltering at times, dividing judgments that were deemed "final" from those found not to be so, does the judgment before us fall? The order of the Oklahoma Corporation Commission, as affirmed below, terminates some but not all issues in this proceeding. Republic is required to take ratably from Peerless, but it may do so in any one of three ways. If, as is most probable, Republic would choose not to close down its own wells, under the Commission's order

[2] In the *Catlin* case our decision was based on the general rule that condemnation orders prior to determination of just compensation are not appealable. The wartime statutes there involved were urged by the claimants as a reason for not applying the general rule. We rejected this contention.

it must allow Peerless to connect its well to Republic's pipeline. But there has been left open for later determination, in event of failure to reach agreement, the terms upon which Republic must take the gas, the rates which it must pay on purchase, or may charge if it sells as agent of Peerless. Does either its alternative character, or the fact that it leaves matters still open for determination, so qualify the order as to make it short of "final" for present review?

We turn first to the latter point. Certainly what remains to be done cannot be characterized as merely "ministerial." Whether or not the amount of gas to be taken by Republic from Peerless can be ascertained through application of a formula, the determination of the price to be paid for the gas if purchased, or the fees to be paid to Republic for marketing it if sold on behalf of Peerless, clearly requires the exercise of judgment.[3] Nor is there any immediate threat of irreparable damage to Republic, rendering postponed review so illusory as to make the decree "final" now or never. The Commission's order requires Republic to designate a point on its pipeline at which Peerless might attach a line, and after Peerless had done so to connect it immediately. But it does not appear that the order requires Republic to commence taking Peerless' gas before the terms of taking have either been agreed upon or ordered by the Commission. Nor does it appear that Republic would have to bear the expense of connecting the pipeline, nor that such expense would be substantial. Indeed, the incurring of some loss, before a process preliminary to review here is exhausted, is not in itself sufficient to authorize our intervention. Cf.

[3] This case is unlike those in which a rate had been fixed, subject to a continuing jurisdiction to modify it later. Cf. *Market Street R. Co.* v. *Railroad Commission*, 324 U. S. 548; *St. Louis, Iron Mountain & Southern R. Co.* v. *Southern Express Co.*, 108 U. S. 24. Here, no rates have been set, and their future establishment has been left open.

Myers v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50–52. But even if the Commission's order were construed to require Republic to take and dispose of Peerless' gas immediately—and we are not so advised by the State court—there is no ground for assuming that any loss that Republic might incur could not be recovered should the completed direction of the Oklahoma Commission, on affirmance by that State's Supreme Court, ultimately be found to be unconstitutional. Merely because a party to a litigation may be temporarily out of pocket, is not sufficient to warrant immediate review of an incomplete State judgment. Appellant, of course, has the burden of affirmatively establishing this Court's jurisdiction. *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 651. The policy against premature constitutional adjudications demands that any doubts in maintaining this burden be resolved against jurisdiction. See citation of cases in the concurring opinion of Mr. Justice Brandeis in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 341, 345, 348.

The condemnation precedents attract this case more persuasively than do the accounting cases. Where it is claimed that a decree transferring property overrides an asserted federal right, as in *Forgay* v. *Conrad*, *supra*, and *Radio Station WOW* v. *Johnson*, *supra*, no disposition of the subsequent accounting proceeding can possibly make up for the defeated party's loss, since the party who has lost the property must also pay to his opponent what the accounting decrees. Hence his desire to appeal the issue of the right to the property will almost certainly persist. On the other hand, in an eminent domain case, as in a case like this, the fate of the whole litigation may well be affected by the fate of the unresolved contingencies of the litigation. An adequate award in an eminent domain case or a profitable rate in the case before us might well satisfy the losing party to acquiesce in the disposition of the earlier issue. It is of course not our province

to discourage appeals. But for the soundest of reasons we ought not to pass on constitutional issues before they have reached a definitive stop. Another similarity between this case and the condemnation cases calls for abstention until what is organically one litigation has been concluded in the State. It is that the matters left open may generate additional federal questions. This brings into vivid relevance the policy against fragmentary review. In accounting cases, that which still remains to be litigated can scarcely give rise to new federal questions. The policy against fragmentary review has therefore little bearing. But contests over valuation in eminent domain cases, as price-fixing in this type of case, are inherently provocative of constitutional claims. This potentiality of additional federal questions arising out of the same controversy has led this Court to find want of the necessary finality of adjudicated constitutional issues in condemnation decrees before valuation has been made. Like considerations are relevant here.

In short, the guiding considerations for determining whether the decree of the court below possesses requisite finality lead to the conclusion that this case must await its culmination in the judicial process of the State before we can assume jurisdiction. "Only one branch of the case has been finally disposed of below, therefore none of it is ripe for review by this court." *Collins* v. *Miller*, 252 U. S. 364, 371. This makes it unnecessary to consider whether the mere fact that the decree gave alternative commands precluded it from being final. Cf. *Paducah* v. *East Tennessee Tel. Co.*, 229 U. S. 476; *Jones's Adm'r* v. *Craig*, 127 U. S. 213; Note, 48 Harv. L. Rev. 302, 305–306. Since the judgment now appealed from lacks the necessary finality, we cannot consider the merits. All of Republic's constitutional objections are of course saved.

Appeal dismissed.

SUPREME COURT OF THE UNITED STATES

No. 134.—October Term, 1947.

Republic Natural Gas Company, Appellant, v. State of Oklahoma, Corporation Commission of the State of Oklahoma and Peerless Oil and Gas Company.	Appeal From the Supreme Court of the State of Oklahoma.

[May 3, 1948.]

Mr. Justice Douglas, concurring.

The judgment of the Oklahoma court is not "final" merely because it establishes that Republic has no right to drain away the Peerless gas without paying for it. I think it would be conceded that, even so, the judgment would not be "final" if it offered appellant three alternative ways to comply and there were doubts as to the constitutionality of any one of them. Then we would wait to see which of the alternatives was ultimately selected or imposed before reviewing the constitutionality of any of them. But there would be no more reason to defer decision on the merits in that case than in this. For the constitutional questions would be isolated in each and we would be as uncertain in one as in the other which of the alternatives would actually apply to appellant. And the principle seems to me to be the same even when a majority of us would sustain the order whatever alternative was chosen as its sanction.

There is, of course, in the one case the chance of saving the order only if one remedy rather than another is chosen, while in the other the order would survive whichever was chosen. But in each we would be giving need-

less constitutional dissertations on some points. That is nonetheless true in a case where the constitutional questions seem to a majority of us simple, uncomplicated and of no great dignity. For the single constitutional question necessary for decision will not be isolated until the precise pinch of the order on the appellant is known. It will not be known in the present case at least until appellant elects or is required (1) to shut down, (2) to become a carrier of the Peerless gas, or (3) to purchase it.

The legal, as well as the economic, relationship which Republic will bear to Peerless will vary as one or another choice is made. To make Republic a "carrier" is to submit it to different business risks than to make it a "purchaser." The fact that each would raise only questions of "due process" under the Fourteenth Amendment does not mean that the questions are identical. Even when reasonableness is the test, judges have developed great contrariety of opinions. The point is that today the variables are presented only in the abstract. Tomorrow the facts will be known, when the precise impact of the order on appellant will be determined. Thus to me the policy against premature constitutional adjudication precludes us from saying the judgment in the present case is "final."

SUPREME COURT OF THE UNITED STATES

No. 134.—October Term, 1947.

Republic Natural Gas Company, Appellant, v. State of Oklahoma, Corporation Commission of the State of Oklahoma and Peerless Oil and Gas Company.	Appeal From the Supreme Court of the State of Oklahoma.

[May 3, 1948.]

Mr. Justice Rutledge, with whom Mr. Justice Black, Mr. Justice Murphy, and Mr. Justice Burton join, dissenting.

I think the Oklahoma Supreme Court's judgment is final for the purposes of § 237 of the Judicial Code, 28 U. S. C. § 344, that the state commission's order is valid, and that deferring decision on the merits to some indefinite future time will only prolong an already lengthy litigation unnecessarily and with possible irreparable harm to one party or the other.

Appellant, Republic Natural Gas Company, has operated gas wells in the Hugoton Gas Field for many years. It was the first major producer to exploit the Oklahoma portion of the field,[1] having constructed its own gathering system and pipe lines extending from Oklahoma into Kansas. With only minor exceptions Republic has never carried any but its own gas in its pipe lines.[2] 198 Okla. at 352.

In 1944 appellee, Peerless Company, completed its only well in Oklahoma, in the Hugoton field. This well

[1] Republic has 92 wells in Kansas and 38 in Oklahoma.

[2] The Oklahoma Supreme Court found it unnecessary to consider whether Republic was either a common carrier or a common purchaser of gas. 198 Okla. at 353. The term "common purchaser" is explained in Okla. Stat., tit. 52, § 240.

is not connected to any pipe line. It therefore presently lies dormant. Surrounding Republic wells drilled into the same reservoir concededly are draining gas constantly from under the Peerless land.[3] Except for the part of Republic's gathering system which runs across the Peerless land, no market outlet that would take sufficient gas to justify production of the Peerless well is close enough to make it financially practical for Peerless to construct its own pipe line. It is undisputed that the only feasible method of producing the well is to require Republic to take Peerless gas into its gathering system.[4]

For this reason Peerless applied to the Oklahoma Corporate Commission for an order compelling Republic to connect its pipe line to the Peerless well and to purchase gas from Peerless at a price to be fixed by the commission.

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[3] Appellant concedes that the "operation of the Republic wells is draining gas from under the dormant Peerless well." The findings of the commission state: "(d) Republic . . . is taking and will continue to take more than its proportionate part of the natural gas in said field unless required to take ratably from said well of Peerless . . . .

"(e) Republic . . . is draining gas from underneath said Section 14 into which said Peerless Oil and Gas Company's well has been drilled, and will continue to drain gas from underneath said Section 14 until all the gas thereunder has been drained and Peerless . . . will be prevented from taking its proportionate share of the natural gas in the field unless Republic . . . is required to take gas ratably from [Peerless]."

[4] The Report of the commission states: "It is evident from all the facts and circumstances in this case that if the Peerless Company is to be allowed to produce gas from its well, this gas must be by it transported fifteen to thirty miles, unless said gas is transported or disposed of by the Republic Natural Gas Company.

"It would be impractical from a financial standpoint to construct a pipeline to any city or other market outlet that would take sufficient gas to justify the production of this well; and it would be impossible to economically operate the well under present conditions existing in that field unless the gas is taken into the pipeline of the Republic Natural Gas Company."

After hearing, the commission concluded that the applicable Oklahoma statutes[5] required it to enforce ratable taking and ratable production of gas as between Republic and Peerless.

The commission recognized alternative methods of protecting Peerless from loss due to drainage, first by ordering all wells in the area to shut down completely, and second by ordering Republic to purchase from Peerless. Since the first method was considered harsh, the second was preferred. Accordingly the commission issued an order requiring Republic to take gas ratably from the Peerless well as soon as the necessary connection could be made, allowing it, however, the alternative of closing down all of its wells in the Oklahoma portion of the field if it preferred this to taking the Peerless gas. The terms and conditions of the taking were to be determined by the parties; but, in the event of failure to agree, they were "granted the right to make further application to the Commission for an order fixing such terms and conditions . . . ."[6] The taking, however, was not to

[5] Okla. Stat., tit. 52, §§ 232, 233, 239, 240, 243.

[6] The order required Republic "1. . . . *to take gas ratably* from [Peerless] *and to make necessary connection as soon as applicant lays a line connecting* said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless . . . has been drilled; *and said respondent is required to make said designation immediately and without* unreasonable delay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Gas Field. (Emphasis added.)

"2. The terms and conditions of such taking of natural gas by [Republic] from [Peerless] shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

await this agreement or further order; it was to begin at once.[7]

Affirming the order, the Supreme Court of Oklahoma construed the state statutes to authorize the administrative action. 198 Okla. 350. The case thus presents on the merits the question whether a state, as a means of adjusting private correlative rights in a common reservoir, has the power in such circumstances as these to compel one private producer to share his market with another, when otherwise his production would drain off that other's ratable share of the gas in place and thus appropriate it to himself.

I.

The majority consider that the proceedings in the state tribunals have not terminated in a final judgment from which appeal to this Court lies, and therefore refuse to adjudicate this question.

In the strictest sense the state proceedings will not be completed until the parties have agreed upon the terms and conditions of Republic's taking of gas from Peerless or, if they do not agree, until the commission has issued an additional order fixing those terms. Since it is not certain that the parties will agree, the possibility remains that a further order may be required before all phases of the controversy are disposed of. It is this possibility, as I think a remote one, which furnishes one of the grounds for concluding that the Oklahoma court's judgment is not final within the meaning and policy of § 237.

The fact that all phases of the litigation are not concluded does not necessarily defeat our jurisdiction. This

[7] See note 6. The order's language leaves no room for the inference, which appears to be injected here, that the taking was not required to begin until the terms had been agreed upon or determined by further order.

is true, although as recently as *Gospel Army* v. *Los Angeles*, 331 U. S. 543, we reiterated that, for a judgment to be final and reviewable under § 237, "it must end the litigation by fully determining the rights of the parties, so that nothing remains to be done by the trial court 'except the ministerial act of entering the judgment which the appellate court . . . directed.'" 331 U. S. at 546. This is the general rule, grounded in a variety of considerations reflected in the statutory command[4] and coming down to the sum that, in exercising the jurisdiction conferred by § 237, this Court is not to be concerned with reviewing inconclusive, piecemeal, or repetitious determinations. The *Gospel Army* case represents a typical instance for applying the terms and the policy of § 237.[5] But not every decision by a state court of last resort leaving the controversy open to further proceedings and orders is either inconclusive of the issues or premature for purposes of review under § 237. This appears most recently from the decision in *Radio Station WOW* v. *Johnson*, 326 U. S. 120, which applied a settled line of authorities to that effect. Cf. *Richfield Oil Corp.* v. *State Board*, 329 U. S. 69.

In such cases the formulation of the test of finality made in the *Gospel Army* and like decisions has not been followed. Instead that question, in the special circumstances, has been treated as posing essentially a practical problem, not one to be determined either by the label attached to the state court judgment by local law, *Richfield Oil Corp.* v. *State Board*, *supra*, or by the merely

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[4] Some of the considerations are enumerated in *Radio Station WOW* v. *Johnson*, 326 U. S. 120, 123–124.

[5] Under California procedure the state supreme court's unqualified order for reversal was "effective to remand the case 'for a new trial and [place] the parties in the same position as if the case had never been tried.'" 331 U. S. at 546 and authorities cited. The effect was thus to leave all issues inconclusively determined pending further proceedings in the trial court.

mechanical inquiry whether some further order or proceeding beyond "the ministerial act of entering judgment" may be had or necessary after our decision is rendered. *Radio Station WOW* v. *Johnson, supra* at 125.

The *WOW* opinion noted that the typical case for applying the broader, less mechanical approach to the question of finality had involved judgments directing the immediate delivery of property, to be followed by an accounting decreed in the same order. It stated, with reference to these and like situations: "In effect, such a controversy is a multiple litigation allowing review of the adjudication which is concluded because it is independent of, and unaffected by, another litigation with which it happens to be entangled." 326 U. S. at 126. Accordingly, since the two phases of the controversy were separate and distinct, we exercised our jurisdiction to determine the federal questions involved in the phase concluded by the state court's decision. This was done, although the judgment required further and possibly extensive judicial proceedings before the other and separable phase of the accounting could reach a final determination.[10] Those further proceedings involved very much more than "ministerial acts"; indeed the determination of a complicated accounting requires the highest order of judicial discretion.

Notwithstanding this and despite the want of strict finality, jurisdiction was sustained because a number of factors were felt to require that action in order to give effect to the policy of § 237 providing for review, rather

[10] The two prior decisions deemed decisive against mechanical determination of finality in such situations were *Forgay* v. *Conrad*, 6 How. 201, and *Carondelet Canal Co.* v. *Louisiana*, 233 U. S. 362, the former of which we noted had "stood on our books for nearly a hundred years in an opinion carrying the authority, especially weighty in such matters, of Chief Justice Taney." 326 U. S. 120, 125.

than to a merely mechanical application of its terms for denying review.

There was nothing tentative or inconclusive about the Nebraska court's judgment for immediate delivery of the property. Nor was it necessary to execution of that phase of the judgment to have contemporaneous conclusion of the accounting phase. Except for the latter, the judgment was ripe for review. Indeed immediate execution without review of the federal questions affecting the delivery phase until after the accounting had been completed, offered the possibility of irreparable harm to one or possibly both of the parties. This factor obviously tended to make later full review partly or wholly futile. Moreover, until the delivery phase had been settled, it could not be known whether the accounting would be necessary, for that need was consequentially incident to and dependent upon determination of the core of the litigation, which was the right to delivery.

In these circumstances it was rightly considered more consistent with the intent and purpose of § 237 to allow immediate review, notwithstanding the possibility of a later further review in the accounting phase, than to deny review with the chance that a later one might not fully save the parties' rights. The section's policy to furnish full, adequate and prompt review outweighed any design to secure absolute and literal "finality."

In all these respects this case presents a parallel to the *WOW* case too close, in my opinion, for distinguishing between them. Republic is not directed to negotiate terms and on completing the negotiation to make its facilities available to Peerless. It is ordered to make a connection with Peerless and to begin carrying gas at once. That phase of the order, like the delivery phase in the accounting cases, does not await the fixing of the terms whether by agreement or by further order.[11] It is a present obli-

[11] See notes 6, 7 *supra* and text.

gation, effective immediately and without qualification.[12] See *Knox Loan Assn.* v. *Phillips*, 300 U. S. 194, 198.

Moreover there is nothing tentative or inconclusive about this phase of the order or the state judgment sustaining it. That phase not only is separable from the matter of fixing the terms; like the order for delivery in the *WOW* case, it is the main core of the controversy to which the aspect of fixing terms is both consequential and incidental. The *WOW* order required immediate delivery of property, with consequent possibility of irreparable harm. Here the order required immediate acceptance of delivery, with similar possibility of injury for one party or the other.[13]

Neither is there greater likelihood of piecemeal consideration of constitutional and other questions than in the *WOW* case. Cf. 326 U. S. at 127. The matter of fixing terms here hardly can be more difficult practically or more complex legally than making the accounting in the *WOW* case.[14] It is hard also to see how one would be either more

[12] In the remote event that Republic should elect to shut down production, there would be no need for a further order or agreement of the parties, and the presently erected obstacle to finality would be completely removed.

[13] To permit Republic to continue drainage from beneath Peerless' land for the indefinite period required for sending the case back to the Oklahoma tribunals and then bringing it back here a second time will be to deprive Peerless of that gas unless the state law allows compensation for such continued taking from the date of the present order. It is at least highly doubtful that the state law allows such a remedy, even if the order is eventually held valid.

On the other hand, if the order should be invalidated on the deferred review, Republic will have been put to further and unnecessary delay, uncertainty and expense in ascertaining its rights, merely to secure a determination which cannot possibly affect them. If this may not be irreparable injury, it certainly is not the policy of § 237.

[14] In view of marketing conditions in this industry, no such problem of valuation or of reaching agreement upon it would be presented as, for instance, in the case of seeking to place a value upon real

or less likely to throw up new constitutional issues than the other. Nor can the *WOW* case be taken to rule that this Court could not or would not consider constitutional issues arising on the accounting phase, unlikely though the necessity for its doing so may have been. There is thus a substantially complete parallel between the situation now presented and that in the *WOW* line of cases.

In one respect this case is stronger for finding appealable finality. For here no further order may be necessary or made, since present resolution of the basic constitutional problem in all probability will end the entire controversy. That certainly would be the result if the decision should go against Peerless or if Republic should elect to shut down production. And if the decision should be in Peerless' favor, it is hardly likely that the parties will be unable to agree upon terms since, in case of failure to agree, the commission will prescribe them.[15] The case indeed is not basically a controversy over terms at all. They present only a contingent, collateral matter. What is fundamentally at stake is the right of Republic to take the gas from beneath Peerless' land and market it without paying Peerless for it. Once that question is finally determined, as it can be only by this Court's decision of the constitutional question, the need for a further order will become highly improbable.

This case therefore is one in which the need for further proceedings may never arise and almost certainly would not do so if the constitutional question were now determined. Indeed, in a closer factual application than the *WOW* case, it presents in the jurisdictional aspect an almost exact parallel to the order reviewed in *Pierce Oil*

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estate taken by condemnation for public use or valuation of property for rate-making purposes. The idea that determining the value of the gas taken here would present all the difficulties of valuing a railroad for rate-making purposes blows the matter up beyond all the practicalities of the situation.

[15] See note 14.

Corp. v. *Phoenix Refining Co.*, 259 U. S. 125, where the Oklahoma commission required the appellant to carry oil for the appellee at unspecified rates. Cf. *Gulf Refining Co.* v. *United States*, 269 U. S. 125; *Clark* v. *Williard*, 292 U. S. 112.

The parallel to the *WOW* line of decisions, however, is put aside and this case is decided by analogy to condemnation cases, particularly *Grays Harbor Logging Co.* v. *Coats-Fordney Co.*, 243 U. S. 251. The analogy is inapposite. It is true that in such cases this Court generally, though not uniformly,[16] has held that the trial court judgment is not final until after the award of compensation is made. The decisions were properly rendered, but for reasons not applicable here. In the *Grays Harbor* case the state constitution and controlling legislation prohibited the transfer of the condemned property until after the compensation had been determined and paid. Thus the issue of the right to take was necessarily dependent for final resolution on the determination of the amount of compensation.[17] The controversy was not separable into distinct phases as in the *WOW* case and here. 243 U. S. at 256.[18] Nor had the state judgment already affected the appellant's property rights, as was true in the *WOW* case and is true here.

In *Catlin* v. *United States*, 324 U. S. 229, the question of the right to take was settled conclusively below before the award of damages was fixed. But there to have permitted an appeal from the order transferring possession

[16] *Wheeling & Belmont Bridge Co.* v. *Wheeling Bridge Co.*, 138 U. S. 287.

[17] The same was said to be true of *Luxton* v. *North River Bridge Co.*, 147 U. S. 337. See *id.* 341.

[18] Moreover, under state practice review of the condemnation order by the state supreme court was by certiorari, not by appeal which lay only from the order fixing damages. As a matter of state law, therefore, the judgment on the condemnation order was interlocutory. See, however, as to this *Catlin* v. *United States*, 324 U. S. 229, 234; *Luxton* v. *North River Bridge Co.*, 147 U. S. 337.

would have produced delays inconsistent with the overriding purpose and policy of the War Purposes and Declaration of Taking Acts. 26 Stat. 316, as amended by 40 Stat. 241, 518; 46 Stat. 1421. 324 U. S. at 235, 238, 240. Here the converse is true, for to refuse to pass on the merits can serve only to prolong the litigation without compensating advantage for the policy of § 237 or other enactment. There is no overriding policy of independent legislation, comparable to that of the War Purposes and Declaration of Taking Acts, dictating denial or deferring of review.

The asserted analogy to the *Grays Harbor, Catlin* and *Luxton* (see note 17) cases therefore does not hold for the entirely different situations now presented. In them either there was no separable phase of the litigation; or statutory policy independent of § 237 or other like requirement of finality forbade review before ultimate disposition of every phase of the litigation in the state or inferior federal courts. The condemnation cases therefore, though generally uniform in denying review of orders for condemnation prior to award of damages, are not uniform in resting this result wholly on the requirement of "finality" made by § 237 and like provisions for review, but frequently rest on other and independent grounds pertinent to the application of those provisions.

The "penumbral area" of appealable finality, see 326 U. S. at 124, may not be sweeping in its scope. It is nevertheless one essential to prevent the letter of the section from overriding its reason. For this purpose it would seem to comprehend any situation presenting separable phases of litigation, one involving the core or crux of the controversy between the parties, the other collateral matters dependent for the necessity of their consideration and decision upon final and unqualified disposition of the hub of the dispute. If a merely mechanical application of § 237 is to be avoided, it cannot be taken that the practical approach of the *WOW* line of decisions must

be limited exclusively to cases where an accounting is ordered to follow delivery of property decreed at the same time. The reason of the exception, indeed of § 237 itself, is not so limited. Because the delivery and accounting cases are not the only ones presenting such problems, judgment must be given some play in other situations as well to decide whether the vices excluded by the policies underlying § 237 are present, as they may be or not according to the character and effects of the particular determination sought to be reviewed.

Finally, it hardly can be that merely the alternative character of the order *per se* deprives it of finality, regardless of whether any of the alternatives presents a substantial federal question. Because Republic is allowed to choose between shutting down its wells and carrying or purchasing the Peerless gas, it seems to be thought that the order lacks finality until that choice is made, even though when made either course would be clearly within the state's power to require.

The argument would have more force if the difference between the alternatives were great enough to make it likely that contrary results might be reached on the different alternatives. But where as here the difference emphasized *e. g.*, is merely between the passage of title before and after the carriage, it is hard to see how there could be more difficulty with one alternative than with the other. See Part II; also Part IV. So minor a distinction hardly furnishes a substantial basis for contrariety of judicial opinion on due process questions. Nor is it suggested that allowing the choice between either of those two courses and shutting down presents greater difficulty. Given constitutionality of all alternatives, it no more transcends state power to permit the party affected to select the course least onerous than to require him to follow the one most burdensome. It is equally hard to see how giving the choice destroys the order's

finality, unless again a wholly mechanical conception of that term as used in § 237 is to control.

The section's policy is against hypothetical, premature and piecemeal constitutional decision, not against a choice of alternatives presenting no such problem. Here the question is whether Oklahoma can offer Republic the choice of shutting down production or taking and paying for the Peerless gas. Either course will protect the latter's rights against drainage by Republic. Either standing alone in the order's terms would not affect finality. Neither, merely upon the premise that alternative character *per se* destroys finality, presents a doubtful question of constitutionality. And finally the alternative of shutting down, realistically considered, is more nearly sanction than alternative mode of compliance.[19]

In such circumstances to say that coupling the two courses alternatively deprives the order of finality seems to me to be giving to the terms of § 237 a mechanical application out of harmony with the section's policy, just as does refusing to decide the case before it is known whether a further order may be necessary for fixing the price of the Peerless gas. Such a view can only handicap administrative action either by forcing orders to specify a single course of compliance when alternatives may be much more desirable, or by delaying review and thus effective administrative action until one or perhaps all of the alternatives in turn are tried out first in election

[19] Cf. *Wabash and Erie Canal* v. *Beers*, 1 Black 54; *Milwaukee and Minnesota R. Co.* v. *Soutter*, 2 Wall. 440.

Control of production, of course, is the core of state conservation programs. In *Champlin Rfg. Co.* v. *Comm'n*, 286 U. S. 210, proration orders limiting production of oil wells to as little as six per cent of capacity were sustained. See p. 229. Cf. *Walls* v. *Midland Carbon Co.*, 254 U. S. 300; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61. The power of a state to protect correlative rights hardly can be regarded as furnishing a less solid basis for control of production than the power to prevent waste. See note 29 and text *infra*.

and then in review. A decision now would settle every substantial pending phase of the controversy. At the most but a minor consequential and separable aspect would remain for remotely possible further action in the state tribunals. It is to the interest of both parties, and the state auhorities as well, that their rights be determined and the controversy be ended. And on the facts the question of jurisdiction is closely related to the merits.

In view of all these considerations, to deny the parties our judgment now is to make a fetish of technical finality without securing any of the substantial advantages for constitutional adjudication which § 237, in the light of its underlying policies, was designed to attain. Instead that section becomes an instrument of sheer delay for the performance of our function, for executing those of state agencies, and for settling parties' rights. The section has no such office. By declaring now that the state may follow either of two clearly permissible courses and allow those with whom it deals to choose between them, we would not speak hypothetically or prematurely or violate any other policy underlying § 237.

II.

Beyond the matter of jurisdiction, there is in this case no such question concerning its exercise as arose in *Rescue Army* v. *Municipal Court*, 331 U. S. 549. The constitutional issues are not speculative, premature or presented abstractly *en masse*. The "alternative character" of the state judgment does not prevent the federal questions from being sufficiently precise and concrete for purposes of decision here, although various ambiguities have been suggested.

Thus it is said that we cannot tell whether the order compels Republic to share its market or merely requires it to carry gas to a market which Peerless must obtain for itself. Cf. *Thompson* v. *Consolidated Gas Co.*, 300 U. S.

55. The order here is not subject to such an ambiguity. It in terms commands Republic to take Peerless gas and to pay for it.[20]

It is also suggested that we cannot tell whether Republic will have to purchase gas from Peerless or just transport the gas to market and account for the profits. But whether legal title passes at one end of the Republic line or at the other is, as we have noted, wholly immaterial as a matter of constitutional law. Cf. *The Pipe Line Cases*, 234 U. S. 548. In either event under the order and judgment Republic must take Peerless gas into its system, must pay for it and, unless its market should expand suddenly far beyond present expectations, must therefore share its market with Peerless.

It is said further that we cannot be sure whether the commission intends to make Republic act as a common carrier. The only basis for this doubt is the fact that the commission's findings state that Republic is a common carrier and common purchaser. But the state supreme court upheld the order on the assumption that those findings were incorrect. The justification for requiring Republic to carry Peerless gas is based primarily on the fact of drainage caused by Republic's production.

III.

It has been noted previously that the question on the merits is not unrelated to the issue of finality. To it,

[20] In its report the commission concluded that Republic should be required to ". . . allow the Peerless gas to enter the Republic pipeline, and pay the Peerless Company for the gas." The order itself in unqualified terms directs Republic "to take gas ratably from [Peerless] . . . as soon as applicant lays a line connecting said well with respondent's line . . . ." See notes 6, 7.

Since neither the commission's report nor the state supreme court's opinion suggests that the command was qualified by the condition that Peerless obtain its own market, we need not read such a condition into the order. The commission report states that "Republic offers to transport the Peerless gas if market can be obtained by [Peerless] . . . ."

accordingly, attention is now directed. The real fight, as has been stated, is over the right of Republic to drain away the Peerless gas without paying for it. The question as cast in legal terms is whether the due process and equal protection clauses of the Fourteenth Amendment deny Oklahoma the power to give one private producer from a common pool the option to shut down production altogether or to purchase gas from another for the purpose of adjusting their correlative rights in the pool, when that is the only practical or feasible alternative consistent with production by both to protect the latter from drainage by the former.

Republic denies the state's power to do this. Its basic position is that it has a federal constitutional right to drain off all the gas in the field, unless other owners of producing rights can supply their own facilities for marketing their production, regardless of varying conditions in different competitive situations and regardless of all consequent practical considerations affecting feasibility of furnishing such facilities.

Republic has no such right. The Constitution did not impress upon the states in a rigid mold either the common-law feudal system of land tenures or any of the modified and variant forms of tenure prevailing in the states in 1789. Rather it left them free to devise and establish their own systems of property law adapted to their varying local conditions and to the peculiar needs and desires of their inhabitants. The original constitution placed no explicit limitation upon the powers of the states in this respect.[21] Not until the Fourteenth Amendment was ratified, nearly eight decades later, was one introduced.

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[21] The nearest approximations perhaps were in the prohibitions against state legislation impairing the obligation of contracts and against *ex post facto* legislation before the latter was limited to criminal and penal consequences. *Calder* v. *Bull*, 3 Dall. 386. See Hale, The Supreme Court and the Contract Clause, 57 Harv. L. Rev. 512, 621, 852.

The Fourteenth Amendment was not designed to nullify state power to create institutions of property in accord with local needs and policies. Whether or not it was intended to secure substantive individual rights as well as procedural ones,[22] it was not a strait jacket immobilizing state power to change or alter institutions of property in the public interest.[23] Almost innumerable decisions have demonstrated this, even though the Amendment has been effective to create substantial limitations upon the methods by which the changes deemed necessary may be made.

The basic question here is really one of substantive due process. It relates primarily to whether Oklahoma can curtail the unqualified right of capture which appellant conceives it acquired by virtue of and as an unalterable incident to its acquisition of surface rights including the right to drill for gas. For, in denying that the state can enforce the only feasible method of limitation consistent with production by Peerless, Republic in effect is saying that the state cannot restrict its right to take all gas in the common reservoir, including all that can be drained from beneath Peerless' lease and the lands of other owners similarly situated. This is, for the particular circumstances, a denial of the state's power to protect correlative

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[22] See MR. JUSTICE BLACK dissenting in *McCart* v. *Indianapolis Water Co.*, 302 U. S. 419, 423; Boudin, Truth and Fiction about the Fourteenth Amendment, 16 N. Y. U. L. Q. Rev. 19.

[23] It is precisely in cases where the Amendment has been made thus effective, often by giving expansive scope to the idea of "property," that its interpretations have failed to withstand the test of time. Compare *Ribnik* v. *McBride*, 277 U. S. 350, with *Olsen* v. *Nebraska*, 313 U. S. 236; *Adair* v. *United States*, 208 U. S. 161 and *Coppage* v. *Kansas*, 236 U. S. 1, with *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 187; *Lochner* v. *New York*, 198 U. S. 45, and *Adkins* v. *Children's Hospital*, 261 U. S. 525, with *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379.

rights in the field or to regulate appellant's taking in the interest of others having equal rights proportionate to their surface holdings. For, though Republic concedes it is bound by Oklahoma's statutory requirement of *pro rata* production, that requirement becomes merely a time factor affecting the rate and length of the period of Republic's drainage, not the total quantity eventually to be taken, if Republic can defy the commission's order and thus leave Peerless in its present helpless condition.

The contention is bold and far reaching, more especially when account is taken of the nature of the industry. Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for conveyance to them from the well mouth. The competitive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monopoly once success has been achieved in a particular field.

These peculiar qualities, moreover, have been reflected in the legal rights relating to the ownership of gas in place, as well as its extraction. They have been adapted to its nature and to that of the competitive struggle regarding it. Only a specialist in this branch of the law, which varies from state to state, can undertake to say with any reliable degree of precision what rights may be in particular situations. These difficulties, intensified by the competitive struggle for the product and the inadequacy of common-law ideas to control it, have forced both the states and the federal government to adopt extensive regulatory measures in recent years. This has been necessary both to conserve the public interest in this rapidly

depleting natural resource [24] and to secure fair adjustment of private rights in the industry. Rather than being a sacred, untouchable enclave of the common law, the field by its very nature lends itself especially to governmental intervention for such purposes. In this respect it is hardly comparable to situations comprehending only conventional manufacturers and merchants of consumable goods.

In accordance with Oklahoma's law, appellant does not assert title to the gas in place. It asserts only the right to capture what it can produce. But that right, unqualified, would include the right to take gas from beneath others' lands. So taken, it defies their rights to a proportionate share and the state's power to secure them, if for reasons rendering marketing through their own facilities unfeasible they cannot join in the unrestrained competitive draining.

So far as the federal Constitution is concerned, there is no such unrestricted fee simple in the right to drain gas from beneath an adjacent owner's land. It is far too late, if it ever was otherwise, to urge that the states are impotent to restrict this unfettered race or to put it upon terms of proportionate equality by whatever measures may be reasonably necessary to that end. Indeed our constitutional history is replete with instances where the states have altered and restricted schemes of property rights in response to the public interest and the states' local needs. In some cases this has gone to the extent of abolishing basic common-law conceptions entirely and substituting new ones indigenous to their areas and the problems they present. Perhaps the most extensive and obvious illustrations are to be found in the systems developed in our arid and mountainous western states for

[24] Cf. *Power Comm'n* v. *Hope Gas Co.*, 320 U. S. 591, dissenting opinion of MR. JUSTICE JACKSON at 628.

governing rights in the waters of flowing streams and mining rights in respect to precious metals.[25] Others are not lacking.[26]

It hardly can be maintained that the creation and control of rights respecting the ownership, extraction and marketing of natural gas are less broadly subject to state control than those relating to waters for irrigation and other uses or to the extraction of precious metals in the regions where those matters have called into play the states' authority to act in the manner best suited to local conditions and the needs of their inhabitants. The similarities of the situations and the problems, for purposes of constitutionality in the exercise of those powers, are so obvious they do not need to be specified.

Historically, the states' freedom to exercise broad powers in defining and regulating rights of ownership and production of natural gas has been recognized almost as long and quite as completely as their similar freedoms to act in relation to water rights and mining rights. In a line of cases beginning a half century ago with *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, this Court has upheld various types of state regulatory schemes designed to prevent waste and to protect the "coequal rights" of the several owners of a common source of supply.[27] These

[25] See *Clark* v. *Nash*, 198 U. S. 361; *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112; *Kansas* v. *Colorado*, 206 U. S. 46, 93–94; *United States* v. *Rio Grande Dam & Irrigation Co.*, 174 U. S. 690, 702–703; *Strickley* v. *Highland Boy Gold Mining Co.*, 200 U. S. 527; *Parley's Park Silver Mining Co.* v. *Kerr*, 130 U. S. 256; *Butte City Water Co.* v. *Baker*, 196 U. S. 119; *Kendall* v. *San Juan Silver Mining Co.*, 144 U. S. 658; *Clason* v. *Matko*, 223 U. S. 646.

[26] *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9; *Wurts* v. *Hoagland*, 114 U. S. 606; *Bacon* v. *Walker*, 204 U. S. 311; cf. *Ferry* v. *Spokane, P. & S. R. Co.*, 258 U. S. 314; *Campbell* v. *California*, 200 U. S. 87.

[27] *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61; *Walls* v. *Midland Carbon Co.*, 254 U. S. 300; *Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8; *Cham-*

cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights.[28]

It is true, as appellant points out, that none of those cases presented the specific issue of whether the state may adjust correlative rights independently of a conservation program. But it is not true that this power is merely incidental to the fundamental right of the state to preserve its natural resources. In fact, if one power were incidental to the other, the *Ohio Oil* case would support the view that waste prevention is justifiable because it serves "the purpose of protecting all the collective owners . . . ." 177 U. S. at 210.[29] Moreover, it is significant that the opinion in *Bandini Petroleum Co.* v. *Superior Court* specifically states that the California regulation is valid on its face, even if viewed as a measure designed purely for the protection of correlative rights. 284 U. S. 8, 22.[30]

Oklahoma's power to regulate correlative rights in the Hugoton field therefore does not stem from her interest merely in the preservation of natural resources. It stems

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plin Refining Co. v. *Corporation Commission*, 286 U. S. 210; *Hunter Co.* v. *McHugh*, 320 U. S. 222.

[28] See Hardwicke, The Rule of Capture, 13 Tex. L. Rev. 391, 414–422; Marshall and Meyers, Legal Planning of Petroleum Production, 41 Yale L. J. 33, 48–52; Ely, The Conservation of Oil, 51 Harv. L. Rev. 1209, 1222–1225; Ford, Controlling the Production of Oil, 30 Mich. L. Rev. 1170, 1181, 1192.

[29] Independently of any statute, several states have granted equitable relief against waste in order to protect the correlative rights of common owners of a reservoir of gas or oil. *Louisville Gas Co.* v. *Kentucky Heating Co.*, 117 Ky. 71; *Manufacturers Gas and Oil Co.* v. *Indiana Natural Gas and Oil Co.*, 155 Ind. 461, 474–475; *Ross* v. *Damm*, 278 Mich. 388; *Higgins Oil & Fuel Co.* v. *Guaranty Oil Co.*, 145 La. 233; *Atkinson* v. *Virginia Oil & Gas Co.*, 72 W. Va. 707.

[30] The Supreme Court of Texas has recently upheld administrative action designed solely to protect correlative rights. *Corzelius* v. *Harrell*, 143 Tex. 509. Note, 24 Tex. L. Rev. 97.

rather from the basic aim and authority of any government which seeks to protect the rights of its citizens and to secure a just accommodation of them when they clash.[31] That authority is constantly exercised in our system in relation to other types of property.[32] In view of this fact and of what has been said concerning conditions in this industry, it would be incongruous for us to hold that oil and gas law is the one phase of property law that cannot be modified except for conservation purposes. Especially in the light of its origin and development in a *laissez faire* atmosphere appropriate for fostering intense competitive expansions, see Merrill, The Evolution of Oil and Gas Law, 13 Miss. L. J. 281, the states should be allowed certainly not less freedom to evolve new property

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[31] Oklahoma can prevent agents of Republic from going on Peerless' land by force of arms and there drilling a well and stealing gas. The state's power to prevent larceny and trespass and to enjoin any use of property that creates a nuisance for a neighboring property owner also justifies the regulation of common property for the mutual advantage of its several owners. *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9; *Bacon* v. *Walker*, 204 U. S. 311.

Under certain circumstances a state may compel one individual to surrender private property solely to enable another to exploit the potential resources of his private property. Thus in *Clark* v. *Nash*, 198 U. S. 361, the plaintiff's land could be made productive only by enlarging an irrigation ditch across defendant's land, and in *Strickley* v. *Highland Boy Gold Mining Company*, 200 U. S. 527, the mining company could deliver its ore to market only by constructing an aerial bucket line across defendant's land. Here Peerless can exploit its property only if Republic is compelled to take its gas to market. Moreover, until Peerless is able to produce the gas under its land, this gas will continue to be withdrawn by Republic. In effect Republic is now exploiting Peerless' property.

[32] *E. g.*, *Head* v. *Amoskeag Mfg. Co.*, 113 U. S. 9; *Wurts* v. *Hoagland*, 114 U. S. 606; *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112; *Bacon* v. *Walker*, 204 U. S. 311; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531; *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22.

rules to keep pace with changing industrial conditions than they possess in nearly every other branch of the law.[33] Here as elsewhere, in considering the proper scope for state experimentation, it is important that we indulge every reasonable presumption in favor of the states' action. They should be free to improve their regulatory techniques as scientific knowledge advances, for here too experimentation is the lifeblood of progress. See Mr. Justice Brandeis dissenting in *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 280.

IV.

The remaining narrow issue is whether the most practical method of achieving a fair accommodation of the correlative rights of the parties is invalid because Republic is required to take and to pay for gas that it does not want—at least does not want if it must pay for it.

Appellant relies heavily on *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, where this Court invalidated an order limiting respondent's production so severely that it would have had to purchase gas from unconnected wells in its vicinity in order to satisfy its commitments. Thus the necessary effect of that order was comparable to the effect of the order under review here.

[33] "It is submitted that through the judicial and legislative processes correlative right-duty relations against injury and non-compensated and preventable drainage do exist, but the difficulty of finding and proving the facts in a particular situation is such that the usual remedies of damages and injunction might not be practicable. It seems more advisable that legislatures enact statutes expressly declaring the existence of these correlative right-duty relations in landowners, apart from public rights against waste, and authorize an administrative agency, after a finding of facts, to promulgate rules and regulations for their protection and authorize the Commission or private owners to enforce such rules and regulations through actions in the courts." Summers, Legal Rights against Drainage of Oil and Gas, 18 Tex. L. Rev. 27, 47.

But there is a crucial difference between the cases. In deciding the *Thompson* case the Court explicitly assumed that the order could be upheld if reasonably designed either to prevent waste or "to prevent undue drainage of gas from the reserves of well owners lacking pipe line connections."[34] Because of a geological anomaly there was a general drainage in the gas field away from the connected wells toward the unconnected wells, 300 U. S. at 71–73, so that the producing wells, rather than draining gas away from the dormant wells, would only reduce their own loss by producing as much as possible. Therefore the limitation on their production could not be justified, since it was neither for the purpose of preventing waste nor a reasonable regulation of correlative rights. Instead of protecting one party from loss, it operated to aggravate the effect of the drainage away from the owners of connected wells. They suffered, not only by an increased drainage loss, but also by the consequence that they were forced to share their facilities and market with the very parties who profited by their loss. The Court held that such an order requiring one company to share its market with another was unconstitutional inasmuch as it was not justified either as a conservation measure or as a reasonable adjustment of correlative rights. The latter justification is present in this case.

The fact that Republic is compelled either to purchase Peerless' gas or to carry it to market and account for the profits does not make the regulation unreasonable. If that were the sole cause for complaint, the state could take the more drastic step of requiring all the well owners to shut down completely until all were able to produce on a ratable basis or came to some agreement effective to make this possible. It is clearly within the state's

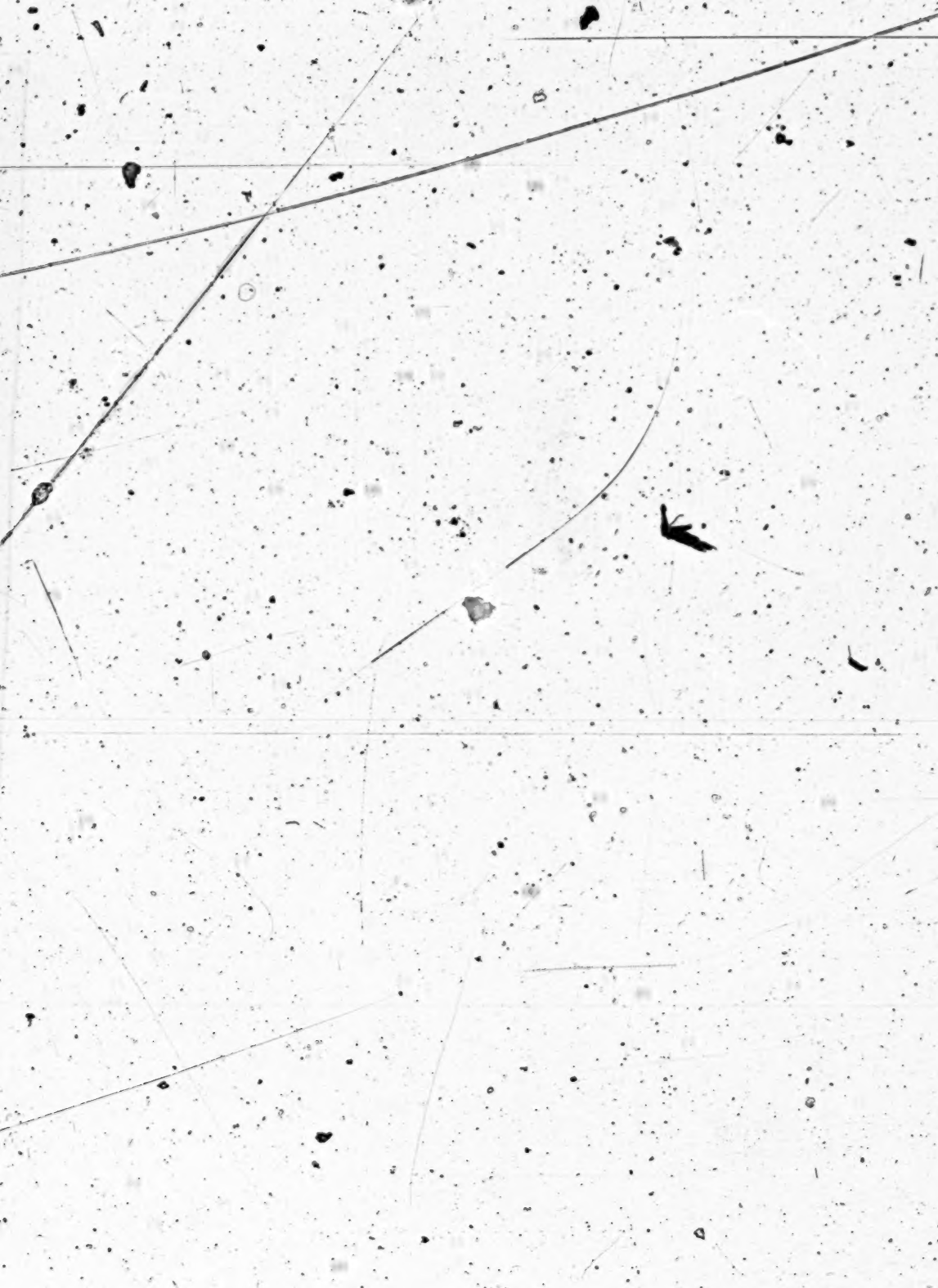
[34] 300 U. S. at 76–77. This assumption is repeated several times in the opinion. See 300 U. S. at 58, 67, 69 and 72–73.

power to require Republic to compensate Peerless for the gas drained from under the Peerless land. *Patterson* v. *Stanolind Co.*, 305 U. S. 376. Here, instead of requiring Republic to make a cash payment based on the estimated amount of drainage, the commission has selected what is unquestionably a more accurate method of adjusting the correlative rights. Even if it could be assumed that this method imposed a somewhat heavier burden on Republic than possible alternatives, it does not follow that the method selected by the commission is unconstitutional. For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solutions to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573. Keeping in mind the fact that property law is peculiarly a matter of local concern, the special difficulty of defining and regulating property rights in natural gas, the respect due to experts in this field, and the rather unusual facts this record presents, I cannot say that the state is without power to enter this order.

It is suggested that the order, since it includes the requirement of purchase and not merely of transportation and accounting for profits, becomes invalid because it shifts from Peerless to Republic the business risk incident to ownership and sale of the gas. Possibly this might furnish a more serious basis for objection in materially different circumstances. But, apart from what has already been said, in those now presented I conceive no substantially greater harm to be possible, from the order's operation, than depriving Republic of the right to drain gas from beneath Peerless' lease without liability to pay for the gas so drained.

This assumes that if the parties should be unable to agree upon terms the commission will fix them in a manner

taking due account of prevailing market conditions relevant to the price to be paid, as well as reasonable compensation for the use of Republic's facilities. With those limitations properly applied, it is hard to see what great business risk will be shifted to Republic. For, as we have already noted, the commodity is one not subject to storage, must be sold as soon as it is transported to the point of consumption, and therefore cannot be subject to possible wide fluctuation in selling price between the times of purchase and sale by Republic.

The facts here, it seems to me, justify the commission's action. Whether others materially different may do so should be left to be considered when they arise.

I would affirm the judgment of the Supreme Court of Oklahoma.